5th Edition

How Canadians Govern Themselves

Eugene A. Forsey

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How Canadians Govern Themselves

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Preface

How Canadians Govern Themselves, first published in 1980, explores Canada's parliamentary system, from the decisions made by the Fathers of Confederation, to the daily work of parliamentarians in the Senate and House of Commons. Useful information on Canada's constitution, the judicial system, and provincial and municipal powers is also gathered together in this one reference book.

The book was initially commissioned by the Department of the Secretary of State of Canada, which also published the second edition. The House of Commons published the third edition, while the fourth was published by the Library of Parliament. This fifth edition was prepared by the Library of Parliament in consultation with the author's family and with the approval the Department of Canadian Heritage. A deliberate effort has been made in each edition to keep revisions to a minimum and to preserve the integrity of Senator Forsey's historical judgements and writing style.

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Note on the Author

The Honourable Eugene A. Forsey was widely regarded as one of Canada's foremost experts on the country's constitution.

Born in Grand Bank, Newfoundland, he attended McGill University in Montreal and studied at Britain's Oxford University as a Rhodes Scholar. He also received numerous honorary degrees.

From 1929 to 1941, Mr. Forsey served as a lecturer in economics and political science at McGill.

In 1942, he became director of research for the Canadian Congress of Labour (CCL), a post he held for 14 years. From 1956 to 1966, he served as director of research for the CCL's successor, the Canadian Labour Congress, and from 1966 to 1969, as director of a special centennial project, a history of Canadian unions, 1812-1902.

During most of his union career, he taught Canadian government at Carleton University in Ottawa and, later, Canadian government and Canadian labour history at the University of Waterloo. From 1973 to 1977, he served as chancellor of Trent University.

Mr. Forsey ran for public office four times for the Co-operative Commonwealth Federation (CCF). In the 1930s, he helped draft the Regina Manifesto, the CCF's founding declaration of policy.

Photo: Jean-Marc Carisse

The Honourable Eugene A. Forsey, 1904-1991

Mr. Forsey was appointed to the Senate in 1970. He retired in 1979 at the mandatory retirement age of 75, and in 1985 was named to the Privy Council. In 1988, he was named a Companion of the Order of Canada, the highest level of membership. The Honourable Eugene A. Forsey died on February 20, 1991, leaving Canadians a rich legacy of knowledge of how we are governed.

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Introduction

Governments in democracies are elected by the passengers to steer the ship of the nation. They are expected to hold it on course, to arrange for a prosperous voyage, and to be prepared to be thrown overboard if they fail in either duty.

This, in fact, reflects the original sense of the word "government," as its roots in both Greek and Latin mean "to steer."

Canada is a democracy, a constitutional monarchy. Our head of state is the Queen of Canada, who is also Queen of Britain, Australia and New Zealand, and a host of other countries scattered around the world from the Bahamas and Grenada to Papua New Guinea and Tuvalu. Every act of government is done in the name of the Queen, but the authority for every act flows from the Canadian people.

When the men who framed the basis of our present written constitution, the Fathers of Confederation, were drafting it in 1867, they freely, deliberately and unanimously chose to vest the formal executive authority in the Queen, "to be administered according to the well understood principles of the British constitution by the Sovereign personally or by the Representative of the Queen." That meant responsible government, with a Cabinet responsible to the House of Commons, and the House of Commons answerable to the people. All of the powers of the Queen are now exercised by her representative, the Governor General, except when the Queen is in Canada.

The Governor General, who is now always a Canadian, is appointed by the Queen on the advice of the Canadian Prime Minister and,. except in very extraordinary circumstances, exercises all powers of the office on the advice of the Cabinet (a council of Ministers), which has the support of a majority of the members of the popularly elected House of Commons.

Canada is not only an independent sovereign democracy, but is also a federal state, with 10 largely self-governing provinces and three territories controlled by the central government.

What does it all mean? How does it work?

The answer is important to every citizen. We cannot work or eat or drink; we cannot buy or sell or own anything; we cannot go to a ball game or a hockey game or watch TV without feeling the effects of government. We cannot marry or educate our children, cannot be sick, born or buried without the hand of government somewhere intervening. Government gives us railways, roads and airlines; sets the conditions that affect farms and industries; manages or mismanages the life and growth of the cities. Government is held responsible for social problems, and for pollution and sick environments.

Government is our creature. We make it, we are ultimately responsible for it, and, taking the broad view, in Canada we have considerable reason to be proud of it. Pride, however, like patriotism, can never be a static thing; there are always new problems posing new challenges. The closer we are to government, and the more we know about it, the more we can do to help meet these challenges.

This publication takes a look at our system of government and how it operates.

Parliamentary Government

Its Origins

Nova Scotia (which, till 1784, included what is now New Brunswick) was the first part of Canada to secure representative government. In 1758, it was given an assembly, elected by the people. Prince Edward Island followed in 1773; New Brunswick at its creation in 1784; Upper and Lower Canada (the predecessors of the present Ontario and Quebec) in 1791; and Newfoundland in 1832.

Nova Scotia was also the first part of Canada to win *responsible* government: government by a Cabinet answerable to, and removable by, a majority of the assembly. New Brunswick followed a month later, in February 1848; the Province of Canada (a merger of Upper and Lower Canada formed in 1840) in March 1848; Prince Edward Island in 1851; and Newfoundland in 1855.

By the time of Confederation in 1867, this system had been operating in most of what is now central and eastern Canada for almost 20 years. The Fathers of Confederation simply continued the system they knew, the system that was already working, and working well.

For the nation, there was a Parliament, with a Governor General representing the Queen; an appointed Upper House, the Senate; and an elected Lower House, the House of Commons. For every province there was a legislature, with a Lieutenant-Governor representing the Queen; for every province except Ontario, an appointed Upper House, the Legislative Council, and an elected Lower House, the Legislative Assembly. The new Province of Manitoba, created by the national Parliament in 1870, was given an Upper House. British Columbia, which entered Canada in 1871, and Saskatchewan and Alberta, created by Parliament in 1905, never had Upper Houses. Newfoundland, which entered Canada in 1949, came in without one. Manitoba, Prince Edward Island, New Brunswick, Nova Scotia and Quebec have all abolished their Upper Houses.

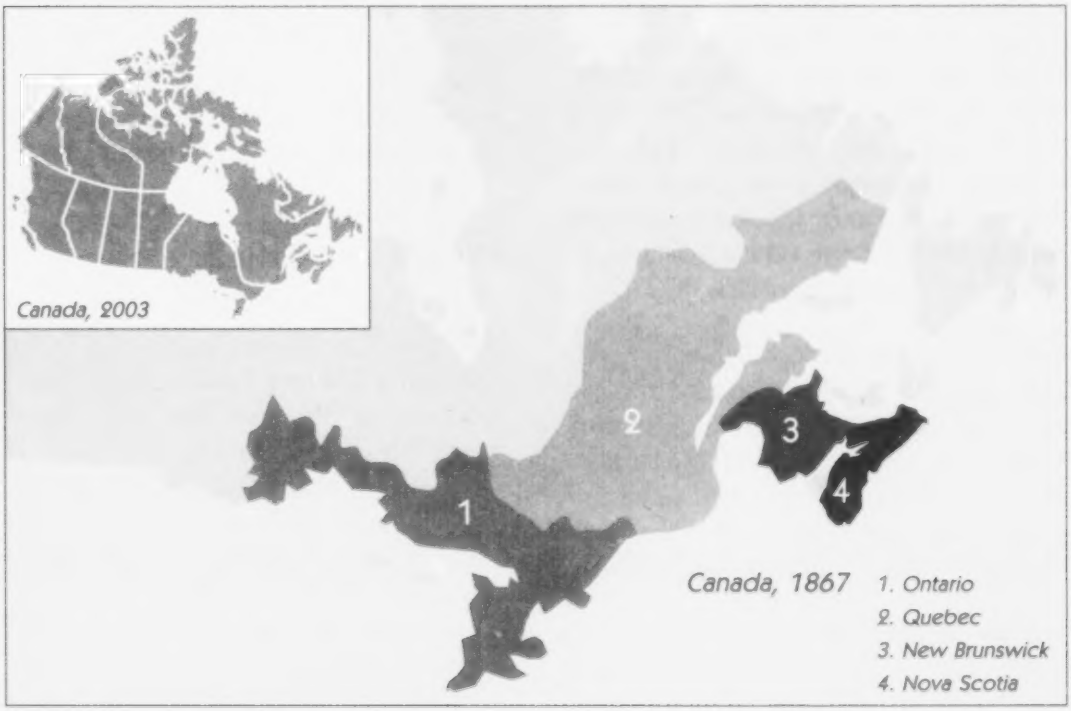
How It Operates

The Governor General (and each provincial Lieutenant-Governor) governs through a Cabinet, headed by a Prime Minister or Premier (the two terms mean the same thing: first minister). If a national or provincial general election gives a party opposed to the Cabinet in office a clear majority (that is, more than half the seats) in the House of Commons or the legislature, the Cabinet resigns and the Governor General or Lieutenant-Governor calls

on the leader of the victorious party to become Prime Minister and form a new Cabinet. The Prime Minister chooses the other Ministers, who are then formally appointed by the Governor General or, in the provinces, by the Lieutenant-Governor. If no party gets a clear majority, the Cabinet that was in office before and during the election has two choices. It can resign, in which case the Governor General or Lieutenant-Governor will call on the leader of the largest opposition party to form a Cabinet. Or the Cabinet already in office can choose to stay in office and meet the newly elected House – which, however, it must do promptly. In either case, it is the people's representatives in the newly elected House who will decide whether the "minority" Government (one whose own party has fewer than half the seats) shall stay in office or be thrown out.

If a Cabinet is defeated in the House of Commons on a motion of censure or want of confidence, the Cabinet must either resign (the Governor General will then ask the Leader of the Opposition to form a new Cabinet) or ask for a dissolution of Parliament and a fresh election.

In very exceptional circumstances, the Governor General could refuse a request for a fresh election. For instance, if an election gave no party a clear majority and the Prime Minister asked for a fresh election without even allowing the new Parliament to meet, the Governor General would have to say no. This is because, if "parliamentary government" is to mean anything, a newly elected House of Commons must at least be allowed to meet and see whether it can transact public business. Also, if a minority government is



defeated on a motion of want of confidence very early in the first session of a new Parliament, and there is a reasonable possibility that a government of another party can be formed and get the support of the House of Commons, then the Governor General could refuse the request for a fresh election. The same is true for the Lieutenant-Governors of the provinces.

No elected person in Canada above the rank of mayor has a "term" of office. Members of Parliament or of a provincial legislature are normally elected for not more than five years, but there can be, and have been, Parliaments and legislatures that have lasted less than a year. The Prime Minister can ask for a fresh election at any time but, as already stated, there may be circumstances in which he or she would not get it. The Cabinet has no "term." Every Cabinet lasts from the moment the Prime Minister is sworn in till he or she resigns or dies. For example, Sir John A. Macdonald was Prime Minister from 1878 until he died in 1891, right through the elections of 1882, 1887 and 1891, all of which he won. Sir Wilfrid Laurier was Prime Minister from 1896 to 1911, right through the elections of 1900, 1904 and 1908, all of which he won. He resigned after being defeated in the election of 1911. The same thing has happened in several provinces. An American President or state governor, re-elected, has to be sworn in all over again. A Canadian Prime Minister or Premier does not.

If a Prime Minister dies or resigns, the Cabinet comes to an end. If this Prime Minister's party still has a majority in the Commons or the legislature, then the Governor General or Lieutenant-Governor must find a new Prime Minister at once. A Prime Minister who resigns has no right to advise the Governor as to a successor unless asked; even then, the advice need not be followed. If he or she resigns because of defeat, the Governor must call on the Leader of the Opposition to form a government. If the Prime Minister dies, or resigns for personal reasons, then the Governor consults leading members of the majority party as to who will most likely be able to form a government that can command a majority in the House. The Governor then calls on the person he or she has decided has the best chance. This new Prime Minister will, of course, hold office only until the majority party has chosen a new leader in a national or provincial convention. This leader will then be called on to form a government.

The Cabinet consists of a varying number of Ministers. The national Cabinet now has about 30 members (although there has been a recent trend toward smaller Cabinets), and provincial Cabinets vary from about 10 to over 30. Most of the Ministers have "portfolios" (that is, they are in charge of particular departments – Finance, Foreign Affairs, Environment, Health, etc.), and are responsible, answerable and accountable to the House of Commons or the legislature for their particular

departments. At present, there are also Secretaries of State, who are not full members of the Cabinet. Sometimes, there are Ministers of State, who may be in charge of a particular section of a department, or of a "ministry," which is not a full-fledged department.

The Ministers collectively are answerable to the House of Commons or the legislature for the policy and conduct of the Cabinet as a whole. If a Minister does not agree with a particular policy or action of the Government, he or she must either accept the policy or action and, if necessary, defend it, or resign from the Cabinet. This is known as "the collective responsibility of the Cabinet," and is a fundamental principle of our form of government.

The Cabinet is responsible for most legislation. It has the sole power to prepare and introduce bills providing for the expenditure of public money or imposing taxes. These bills must be introduced first in the House of Commons; however, the House cannot *initiate* them, or *increase* either the tax or the expenditure without a royal recommendation in the form of a message from the Governor General. The Senate cannot increase either a tax or an expenditure. However, any Member of either House can move a motion to *decrease* a tax or an expenditure, and the House concerned can pass it, though this hardly ever happens.

A Federal State

A federal state is one that brings together a number of different political communities with a common government for common purposes, and separate "state" or "provincial" or "cantonal" governments for the particular purposes of each community. The United States of America, Canada, Australia and Switzerland are all federal states. Federalism combines unity with diversity. It provides, as Sir John A. Macdonald, Canada's first Prime Minister, said, "A general government and legislature for general purposes with local governments and legislatures for local purposes."

The word "confederation" is sometimes used to mean a league of independent states, like the United States from 1776 to 1789. But for our Fathers of Confederation, the term emphatically did not mean that. French-speaking and English-speaking alike, they said plainly and repeatedly that they were founding "a new nation," "a new political nationality," "a powerful nation, to take its place among the nations of the world," "a single great power."

They were very insistent on maintaining the identity, the special culture and the special institutions of each of the federating provinces or colonies. Predominantly French-speaking and Roman Catholic, Canada East (Quebec) wanted to be free of the horrendous threat that an English-speaking and

Photo: Library of Parliament

The Fathers of Confederation, Quebec Conference, 1864.

mainly Protestant majority would erode or destroy its rights to its language, its French-type civil law, and its distinctively religious system of education. Overwhelmingly English-speaking and mainly Protestant, Canada West (Ontario) was still smarting from the fact that Canada East members in the legislature of the united Province of Canada had thrust upon it a system of Roman Catholic separate schools which most of the Canada West members had voted against. Canada West wanted to be free of what some of its leaders called "French domination." For their part, Nova Scotia and New Brunswick had no intention of being annexed or absorbed by the Province of Canada, of which they knew almost nothing and whose political instability and incessant "French-English" strife they distrusted.

On the other hand, all felt the necessity of union for protection against the threat of American invasion or American economic strangulation (for six months of the year, the Province of Canada was completely cut off from Britain, its main source of manufactured goods, except through American ports) and for economic growth and development. So the Fathers of Confederation were equally insistent on a real federation, a real "Union," as they repeatedly called it, not a league of states or of sovereign or semi-independent provinces.

The Fathers of Confederation were faced with the task of bringing together small, sparsely populated communities scattered over immense distances. Not only were these communities separated by natural barriers that might well have seemed insurmountable, but they were also divided by deep divergences of economic interest, language, religion, law and education. Communications were poor and mainly with the world outside British North America.

To all these problems, they could find only one answer: federalism.

The provinces dared not remain separate, nor could they merge. They could (and did) form a federation, with a strong central government and Parliament, but also with an ample measure of autonomy and self-government for each of the federating communities.

Our Constitution

The *British North America Act, 1867*, was the instrument that brought the federation, the new nation, into existence. It was an Act of the British Parliament. But, except for two small points, it was simply the statutory form of resolutions drawn up by delegates from what is now Canada. Not a single representative of the British government was present at the conferences that drew up those resolutions, or took the remotest part in them.

The two small points on which our constitution is not entirely homemade are, first, the legal title of our country, "Dominion," and, second, the provisions for breaking a deadlock between the Senate and the House of Commons.

The Fathers of Confederation wanted to call the country "the Kingdom of Canada." The British government was afraid of offending the Americans so it

Photo: Library of Parliament

ELIZABETH THE SECOND

BY THE GRACE OF GOD OF THE UNITED KINGDOM, CANADA AND HER OTHER REALMS AND TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH, DEFENDER OF THE FAITH.

TO ALL TO WHOM THESE PRESENTS SHALL COME OR WHOM THE SAME MAY IN ANYWAY CONCERN, — *Greeting:*

ELIZABETH DEUX

PAR LA GRÂCE DE DIEU REINE DU ROYAUME-UNI, DU CANADA ET DE SES AUTRES ROYAUMES ET TERRITOIRES, CHEF DU COMMONWEALTH, DÉFENSEUR DE LA FOI.

À TOUS CEUX QUE LES PRÉSENTES PEUVENT DE QUELQUE MANIÈRE CONCERNER, — *Salut:*

A PROCLAMATION — PROCLAMATION

WHEREAS in the past certain amendments to the Constitution of Canada have been made by the Parliament of the United Kingdom at the request and with the consent of Canada;

AND WHEREAS it is in accord with the status of Canada as an independent state that Canadians be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to the Constitution;

AND WHEREAS the Parliament of the United Kingdom has therefore, at the request and with the consent of Canada, enacted the Canada Act, which provides for the patriation and amendment of the Constitution of Canada;

AND WHEREAS section 58 of the Constitution Act, 1982, set out in Schedule B to the Canada Act, provides that the Constitution Act, 1982 shall, subject to section 59 thereof, come into force on a day to be fixed by proclamation issued under the Great Seal of Canada;

NOW KNOW YOU that We, by and with the advice of Our Privy Council for Canada, do by this Our Proclamation declare that the Constitution Act, 1982 shall, subject to section 59 thereof, come into force on the Seventeenth day of April, in the Year of Our Lord One Thousand Nine Hundred and Eighty-two.

OF ALL WHICH Our Loving Subjects and all others whom these Presents may concern are hereby required to take notice and to govern themselves accordingly.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

At Our City of Ottawa, this Seventeenth day of April in the Year of Our Lord One Thousand Nine Hundred and Eighty-two and in the Thirty-first Year of Our Reign.

By Her Majesty's Command,

Registrar General of Canada

Prime Minister of Canada

GOD SAVE THE QUEEN

CONSIDÉRANT qu'à la demande et avec le consentement du Canada, le Parlement du Royaume-Uni a déjà modifié à plusieurs reprises la Constitution du Canada;

qu'en vertu de leur appartenance à un État souverain, les Canadiens se doivent de détenir tout pouvoir de modifier leur Constitution au Canada;

qu'il est souhaitable d'enchâsser dans la Constitution du Canada la reconnaissance d'un certain nombre de libertés et de droits fondamentaux et d'y apporter d'autres modifications;

que le Parlement du Royaume-Uni, à la demande et avec le consentement du Canada, a adopté en conséquence la Loi sur le Canada, qui prévoit le rapatriement de la Constitution canadienne et sa modification;

que l'article 58, figurant à l'annexe B de la Loi sur le Canada, stipule que, sous réserve de l'article 59, la Loi constitutionnelle de 1982 entrera en vigueur à une date fixée par proclamation sous le grand sceau du Canada;

NOUS PROCLAMONS sur l'avis de Notre Conseil privé pour le Canada que la Loi constitutionnelle de 1982 entrera en vigueur, sous réserve de l'article 59, le dix-septième jour du mois d'avril en l'an de grâce mil neuf cent quatre-vingt-deux.

NOUS DEMANDONS À Nos loyaux sujets et à toute autre personne concernée de prendre acte de la présente proclamation.

EN FOI DE QUOI, Nous avons rendu les présentes lettres patentes et y avons fait apposer le grand sceau du Canada.

Fait en Notre ville d'Ottawa, ce dix-septième jour du mois d'avril en l'an de grâce mil neuf cent quatre-vingt-deux, le trente-et-unième de Notre règne.

Par ordre de Sa Majesté

Le registraire général du Canada

Le premier ministre du Canada

DIEU PROTÈGE LA REINE

The Constitution Act, 1982, *came into force on April 17, 1982.*

insisted on the Fathers finding another title. They did, from Psalm 72: "He shall have dominion also from sea to sea, and from the river unto the ends of the earth." It seemed to fit the new nation like the paper on the wall. They explained to Queen Victoria that it was "intended to give dignity" to the Union, and "as a tribute to the monarchical principle, which they earnestly desire to uphold."

To meet a deadlock between the Senate and the House of Commons, the Fathers had made no provision. The British government insisted that they produce something. So they did: sections 26 to 28 of the Act, which have been used only once, in 1990.

That the federation resolutions were brought into effect by an Act of the British Parliament was the Fathers' deliberate choice. They could have chosen to follow the American example, and done so without violent revolution.

Sir John A. Macdonald, in the Confederation debates, made that perfectly clear. He said: "...If the people of British North America after full deliberation had stated that...it was for their interest, for the advantage of British North America to sever the tie [with Britain],...I am sure that Her Majesty and the Imperial Parliament would have sanctioned that severance." But: "Not a single suggestion was made, that it could...be for the interest

of the colonies...that there should be a severance of our connection....There was a unanimous feeling of willingness to run all the hazards of war [with the United States]...rather than lose the connection...."

Hence, the only way to bring the federation into being was through a British Act.

That Act, the *British North America Act, 1867* (now renamed the *Constitution Act, 1867*), contained no provisions for its own amendment, except a limited power for the provinces to amend their own constitutions. All other amendments had to be made by a fresh Act of the British Parliament.

At the end of the First World War, Canada signed the peace treaties as a distinct power, and became a founding member of the League of Nations and the International Labour Organization. In 1926, the Imperial Conference recognized Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland as "autonomous communities, in no way subordinate to the United Kingdom in any aspect of their domestic or external affairs." Canada had come of age.

This gave rise to a feeling that we should be able to amend our constitution ourselves, without even the most formal intervention by the British Parliament. True, that Parliament usually passed any amendment we asked for. But more and more Canadians felt this was not good enough. The whole process should take place here. The Constitution should be "patriated" – brought home. Attempts to bring this about began in 1927. Until 1981, they failed, not because of any British reluctance to make the change, but because the federal and provincial governments could not agree on a generally acceptable method of amendment. Finally, after more than half a century of federal-provincial conferences and negotiations, the Senate and the House of Commons, with the approval of nine provincial governments, passed the necessary joint address asking for the final British Act. This placed the whole process of amendment in Canada, and removed the last vestige of the British Parliament's power over our country.

The *Constitution Act, 1867*, remains the basic element of our written constitution. But the written constitution, the strict law of the constitution, even with the latest addition, the *Constitution Act, 1982*, is only part of our whole working constitution, the set of arrangements by which we govern ourselves. It is the skeleton; it is not the whole body.

Responsible government, the national Cabinet, the bureaucracy, political parties: all these are basic features of our system of government. But the written constitution does not contain one word about any of them (except for that phrase in the preamble to the Act of 1867 about "a Constitution similar in principle to that of the United Kingdom"). The flesh, the muscles, the sinews, the nerves of our constitution have been added by legislation (for example, federal and provincial elections Acts, *the Parliament of Canada Act*, the legislative assembly Acts, the public services Acts); by

custom (the Prime Minister, the Cabinet, responsible government, political parties, federal-provincial conferences); by judgements of the courts (interpreting what the Act of 1867 and its amendments mean); and by agreements between the national and provincial governments.

If the written constitution is silent on all these things, which are the living reality of our constitution, what does it say? If it leaves out so much, what does it put in?

Before we answer that question, we must understand that our written constitution, unlike the American, is not a single document. It is a collection of 25 primary documents outlined in the *Constitution Act, 1982*: 14 Acts of the British Parliament, seven of the Canadian, and four British orders-in-council.

The core of the collection is still the Act of 1867. This, with the amendments added to it down to the end of 1981, did 12 things.

1 First, it created the federation, the provinces, the territories, the national Parliament, the provincial legislatures and some provincial Cabinets.

2 Second, it gave the national Parliament power to create new provinces out of the territories, and also the power to change provincial boundaries with the consent of the provinces concerned.

3 Third, it set out the power of Parliament and of the provincial legislatures.

4 Fourth, it vested the formal executive power in the Queen, and created the Queen's Privy Council for Canada (the legal basis for the federal Cabinet).

5 Fifth, it gave Parliament power to set up a Supreme Court of Canada (which it did, in 1875).

6 Sixth, it guaranteed certain limited rights equally to the English and French languages in the federal Parliament and courts and in the legislatures and courts of Quebec and Manitoba.

7 Seventh, it guaranteed separate schools for the Protestant and Roman Catholic minorities in Quebec and Ontario. It also guaranteed separate schools in any other province where they existed by law in 1867, or were set up by any provincial law after 1867. There were special provisions for Manitoba (created in 1870), which proved ineffective; more limited guarantees for Alberta and Saskatchewan (created in 1905); and for Newfoundland (which came into Confederation in 1949), a guarantee of separate schools for a variety of Christian denominations. (Constitutional amendments have now changed the school systems in Quebec and in Newfoundland and Labrador, as the province of Newfoundland is now officially known.)

8 Eighth, it guaranteed Quebec's distinctive civil law.

9 Ninth, it gave Parliament power to assume the jurisdiction over property and civil rights, or any part of such jurisdiction, in other provinces, provided

the provincial legislatures consented. This power has never been used.

10 Tenth, it prohibited provincial tariffs.

11 Eleventh, it gave the provincial legislatures the power to amend the provincial constitutions, except as regards the office of Lieutenant-Governor.

12 Twelfth, it gave the national government (the Governor-in-Council, that is, the federal Cabinet) certain controls over the provinces: appointment, instruction and dismissal of Lieutenant-Governors (two have been dismissed); disallowance of provincial Acts within one year after their passing (112 have been disallowed — the last in 1943 — from every province except Prince Edward Island and Newfoundland and Labrador); power of Lieutenant-Governors to send provincial bills to Ottawa unassented to (in which case they do not go into effect unless the central executive assents within one year; of 70 such bills, the last in 1961, from every province but Newfoundland and Labrador, only 14 have gone into effect).

These are the main things the written constitution did as it stood at the end of 1981. They provided the legal framework within which we could, and did, adapt, adjust, manoeuvre, innovate, compromise, and arrange, by what Prime Minister Sir Robert Borden called "the exercise of the commonplace quality of common sense."

The final British Act of 1982, the *Canada Act*, provided for the termination of the British Parliament's power over Canada and for the "patriation" of our constitution. Under the terms of the *Canada Act*, the *Constitution Act, 1982*, was proclaimed in Canada and "patriation" was achieved.

Under the *Constitution Act, 1982*, the *British North America Act, 1867*, and its various amendments (1871, 1886, 1907, 1915, 1930, 1940, 1960, 1964, 1965, 1974, 1975) became the *Constitution Acts, 1867 to 1975*.

There is a widespread impression that the *Constitution Act, 1982*, gave us a "new" constitution. It did not. In fact, that Act itself says that "the Constitution of Canada includes" fourteen Acts of the Parliament of the United Kingdom, seven Acts of the Parliament of Canada, and four United Kingdom orders-in-council (giving Canada the original Northwest Territories and the Arctic Islands, and admitting British Columbia and Prince Edward Island to Confederation). Several of the Acts got new names; two, the old *British North America Act, 1867* (now the *Constitution Act, 1867*), and *the Manitoba Act, 1870*, suffered a few minor deletions. The part of the United Kingdom *Statute of Westminster, 1931* that is included had minor amendments.

The rest, apart from changes of name, are untouched. What we have now is not a new constitution but the old one with a very few small deletions and four immensely important additions; in an old English slang phrase, the old constitution with knobs on.

What are the big changes that the *Constitution Act, 1982* made in our constitution?

1 First, it established four legal formulas or processes for amending the Constitution. Until 1982, there had never been any legal amending formula (except for a narrowly limited power given to the national Parliament in 1949, a power now superseded).

The first formula covers amendments dealing with the office of the Queen, the Governor General, the Lieutenant-Governors, the right of a province to at least as many seats in the House of Commons as it had in the Senate in 1982, the use of the English and French languages (except amendments applying only to a single province), the composition of the Supreme Court of Canada and amendments to the amending formulas themselves.

Amendments of these kinds must be passed by the Senate and the House of Commons (or by the Commons alone, if the Senate has not approved the proposal within 180 days after the Commons has done so), and by the legislature of every province. This gives every single province a veto.

The second formula is the general amending formula. It includes amendments concerning the withdrawal of any rights, powers or privileges of provincial governments or legislatures; the proportionate representation of the provinces in the House of Commons; the powers of the Senate and the method of selecting Senators; the number of Senators for each province, and their residence qualifications; the constitutional position of the Supreme Court of Canada (except its composition, which comes under the first formula); the extension of existing provinces into the territories; the creation of new provinces; and, generally, the *Canadian Charter of Rights and Freedoms* (which is dealt with later).

Such amendments must be passed by the Senate and the House of Commons (or, again, the Commons alone if the Senate delays more than 180 days), and by the legislatures of two-thirds of the provinces with at least half the total population of all the provinces (that is, the total population of Canada excluding

Photo: ©NCC/CCN

In this bronze sculpture on Parliament Hill, Emily Murphy, one of the "Famous Five" who fought for women's legal status as persons, invites us to celebrate women's equality, now enshrined in the Charter.

the territories). This means that any four provinces taken together (for example, the four Atlantic provinces, or the four Western) could veto any such amendments. So could Ontario and Quebec taken together. The seven provinces needed to pass any amendment would have to include at least one of the two largest provinces of Quebec or Ontario.

Any province can, by resolution of its legislature, opt out of any amendment passed under this formula that takes away any of its powers, rights or privileges; and if the amendment it opts out of transfers power over education or other cultural matters to the national Parliament, Parliament must pay the province "reasonable compensation."

The third formula covers amendments dealing with matters that apply only to one province, or to several but not all provinces. Such amendments must be passed by the Senate and the House of Commons (or the Commons alone, if the Senate delays more than 180 days), and by the legislature or legislatures of the particular province or provinces to which it applies. Such amendments include any changes in provincial boundaries, or changes relating to the use of the English or French language in a particular province, or provinces.

The fourth formula covers changes in the executive government of Canada or in the Senate and House of Commons (other than those covered by the first two formulas). These amendments can be made by an ordinary Act of the Parliament of Canada.

The second big change made by the *Constitution Act, 1982*, is that the first three amending formulas "entrench" certain parts of the written constitution, that is, place them beyond the power of Parliament or any provincial legislature to touch.

For example, the monarchy cannot now be touched except with the unanimous consent of the provinces. Nor can the governor generalship, nor the lieutenant-governorships, nor the composition of the Supreme Court of Canada, nor the right of a province to at least as many Members of the Commons as it had Senators in 1982, nor the amending formulas themselves. On all of these, any single province can impose a veto. Matters coming under the second formula can be changed only with the consent of seven provinces with at least half the population of the 10.

The guarantees for the English and French languages in New Brunswick, Quebec and Manitoba cannot be changed except with the consent both of the provincial legislatures concerned and the Senate and House of Commons (or the Commons alone, under the 180-day provision). The guarantees for denominational schools in Newfoundland and Labrador could not have been changed except with the consent of the legislature of Newfoundland and Labrador; nor can the Labrador boundary.

The amending process under the first three formulas can be initiated by the Senate, or the House of Commons, or a provincial legislature. The ordinary

Act of Parliament required by the fourth formula can, of course, be initiated by either House.

3 Third, the new *Constitution Act, 1982*, sets out the *Canadian Charter of Rights and Freedoms* that neither Parliament nor any provincial legislature acting alone can change. Any such changes come under the second formula (or, where they apply only to one or more, but not all, provinces, the third formula).

The rights and freedoms guaranteed by the Charter are:

1 Democratic rights (for example, the right of every citizen to vote for the House of Commons and the provincial legislative assembly, and the right to elections at least every five years, though in time of real or apprehended war, invasion or insurrection, the life of a federal or provincial legislature may be prolonged by a two-thirds vote of the Commons or legislative assembly).

2 Fundamental freedoms (conscience, religion, thought, expression, peaceful assembly, association).

3 Mobility rights (to enter, remain in, or leave Canada, and to move into, and earn a living in, any province subject to certain limitations, notably to provide for "affirmative action" programs for the socially or economically disadvantaged).

4 Legal rights (a long list, including such things as the right to a fair, reasonably prompt, public trial by an impartial court).

5 Equality rights (no discrimination on grounds of race, national or ethnic origin, religion, sex, age or mental or physical disability; again, with provision for "affirmative action" programs).

6 Official language rights.

7 Minority language education rights in certain circumstances.

All these rights are, under section 1 of the Charter, "subject only to such reasonable limits...as can be demonstrably justified in a free and democratic society." The courts decide what these limits are.

The equality rights came into force on April 17, 1985, three years after the time of patriation of our constitution. (This gave time for revision of the multitude of federal, provincial and territorial laws that may have required amendment or repeal.)

The fundamental, legal and equality rights in the Charter are subject to a "notwithstanding" clause. This allows Parliament or a provincial legislature to pass a law violating any of these rights (except the equality right that prohibits discrimination based on sex) simply by inserting in such law a declaration that it shall operate notwithstanding the fact that it is contrary to this or that provision of the Charter. Any such law can last only five years, but it can be re-enacted for further periods of five years. Any such legislation must apply equally to men and women.

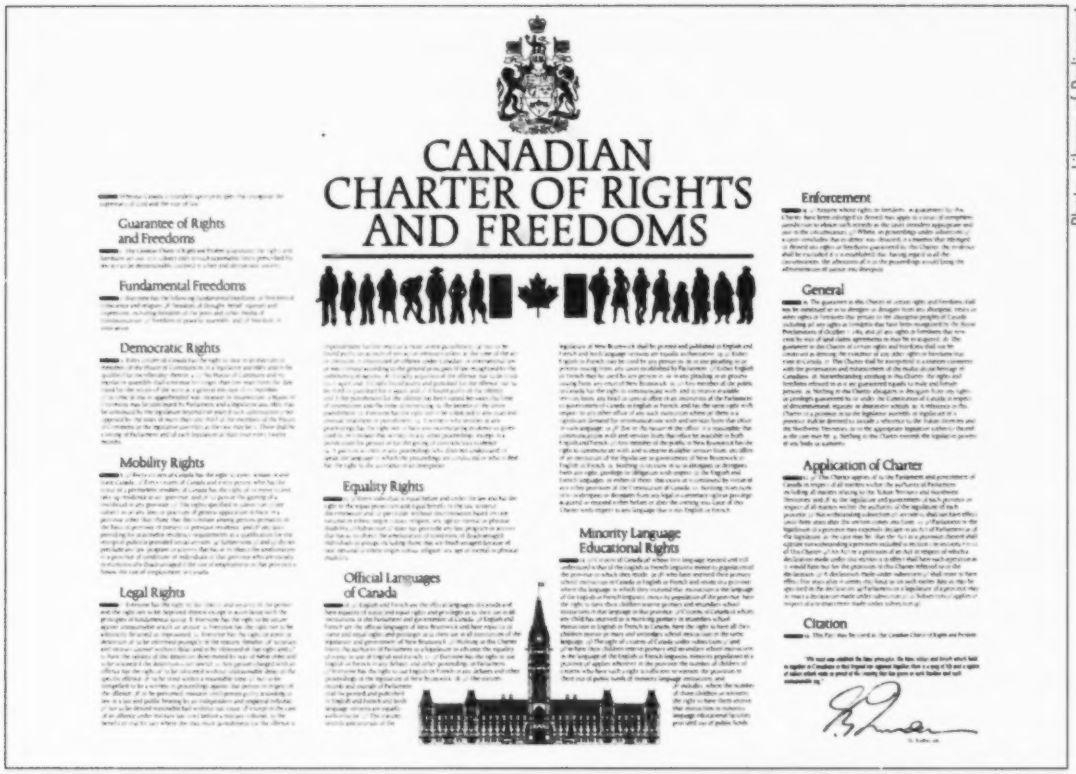


Photo: Library of Parliament

The Charter guarantees four fundamental freedoms and six basic rights.

The official language rights make English and French the official languages of Canada for all the institutions of the government and Parliament of Canada and of the New Brunswick government and legislature. Everyone has the right to use either language in Parliament and the New Brunswick legislature. The Acts of Parliament and the New Brunswick legislature, and the records and journals of both bodies, must be in both languages. Either language may be used in any pleading or process in the federal and New Brunswick courts. Any member of the public has the right to communicate with the government and Parliament of Canada, and the government and legislature of New Brunswick, and to receive available services, in either language where there is "a sufficient demand" for the use of English or French or where the nature of the office makes it reasonable.

The minority language education rights are twofold.

1 In every province, citizens of Canada with any child who has received or is receiving primary or secondary schooling in English or French have the right to have all their children receive their schooling in the same language, in minority language educational facilities provided out of public funds, where the number of children "so warrants." Also, citizens who have received their own primary

schooling in Canada in English or French, and reside in a province where that language is the language of the English or French linguistic minority, have the right to have their children get their primary and secondary schooling in the language concerned, where numbers warrant.

2 In every province except Quebec, citizens whose mother tongue is that of the English or French linguistic minority have the right to have their children get their primary and secondary schooling in the language concerned, where numbers so warrant. This right will be extended to Quebec only if the legislature or government of Quebec consents.

Anyone whose rights and freedoms under the Charter have been infringed or denied can apply to a court of competent jurisdiction "to obtain such remedy as the court considers appropriate and just." If the court decides that any evidence was obtained in a manner that infringed or denied rights and freedoms guaranteed under the Charter, it must exclude such evidence "if it is established that... the admission of it...would bring the administration of justice into disrepute."

The Charter (except for the language provisions for New Brunswick, which can be amended by joint action of Parliament and the provincial legislature) can be amended only with the consent of seven provinces with at least half the total population of the ten.

The Charter is careful to say that the guarantees it gives to certain rights and freedoms are not to "be construed as denying the existence of any other rights or freedoms that exist in Canada." It declares also that nothing in it "abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools." These are, and remain, entrenched.

Before the Charter was added, our written constitution entrenched certain rights of the English and French languages, the Quebec civil law, certain rights to denominational schools and free trade among the provinces. Apart from these, Parliament and the provincial legislatures could pass any laws they saw fit, provided they did not jump the fence into each other's gardens. As long as Parliament did not try to legislate on subjects that belonged to provincial legislatures, and provincial legislatures did not try to legislate on subjects that belonged to Parliament, Parliament and the legislatures were "sovereign" within their respective fields. There were no legal limits on what they could do (though of course provincial laws could be disallowed by the federal Cabinet within one year). The only ground on which the courts could declare either a federal or a provincial law unconstitutional (that is, null and void) was that it intruded into the jurisdictional territory of the other order of government (or, of course, had violated one of the four entrenched rights).

The Charter has radically changed the situation. Parliament and the legislatures will, of course, still not be allowed to jump the fence into each other's gardens. But both federal and provincial laws can now be challenged, and thrown out by the courts, on the grounds that they violate the Charter. This is something with which the Americans, with their Bill of Rights entrenched in their constitution, have been familiar for almost 200 years. For us, it was almost completely new.

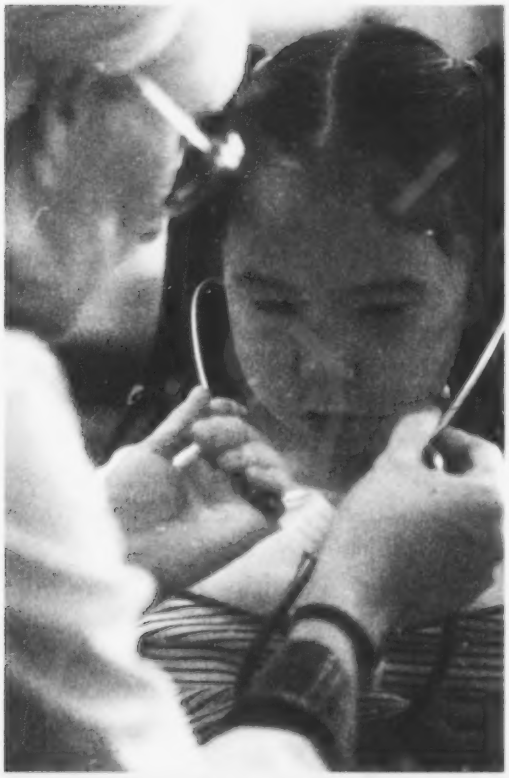
Plainly, this enormously widens the jurisdiction of the courts. Before the Charter, Parliament and the provincial legislatures, "within the limits of subject and area" prescribed by the *Constitution Act, 1867*, enjoyed "authority as plenary and as ample as the Imperial Parliament in the plenitude of its power possessed and could bestow." In other words, within those limits, they could do anything. They were sovereign. The Charter ends that. It imposes new limits.

Section 1 of the Charter itself provides some leeway for Parliament and the legislatures. It says that the rights the Charter guarantees are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The courts decide the meaning of "reasonable" and "demonstrably justified" and "a free and democratic society." Their decisions have restricted how Parliament and the legislatures may use the powers they had before the Charter came into effect, and the jurisprudence is still evolving.

The Charter also contains a provision that Parliament, or a provincial legislature, can override some important parts of the Charter by inserting in an Act that would otherwise violate those provisions, a plain declaration that the Act shall operate "notwithstanding" the Charter. Such an Act is limited to five years, but can be extended for renewed periods of five years. This allows a partial restoration of the sovereignty of Parliament and the provincial legislatures, but has seldom been used because of the political consequences.

4 The fourth big change made by the *Constitution Act, 1982* gives the provinces wide powers over their natural resources. Each province is now able to control the export, to any other part of Canada, of the primary production from its mines, oil wells, gas wells, forests and electric power plants, provided it does not discriminate against other parts of Canada in prices or supplies. But the national Parliament is still able to legislate on these matters, and if provincial and federal laws conflict, the federal will prevail. The provinces are also able to levy indirect taxes on their mines, oil wells, gas wells, forests and electric power plants and primary production from these sources. But such taxes must be the same for products exported to other parts of Canada and products not so exported.

These four big changes, especially the amending formulas and the Charter, are immensely important. But they leave the main structure of government, and



Delivery of health services is the responsibility of provincial and territorial governments, except in the case of those groups that fall under federal jurisdiction, such as aboriginal peoples, the Canadian forces and veterans.

almost the whole of the division of powers between the national Parliament and the provincial legislatures, just what they were before.

Incidentally, they leave the provincial legislatures their power to confiscate the property of any individual or corporation and give it to someone else, with not a penny of compensation to the original owner. In two cases, Ontario and Nova Scotia did just that, and the Ontario Court of Appeal ruled: "The prohibition 'Thou shalt not steal' has no legal force upon the sovereign body. And there would be no necessity for compensation to be given." The Charter does not change this. The only security against it is the federal power of disallowance (exercised in the Nova Scotia case) and the fact that today very few legislatures would dare to try it, save in most extraordinary circumstances: the Members who voted for it would be too much afraid of being defeated in the next election.

The *Constitution Act, 1982*, makes other changes and one of these looks very significant. The *BNA Act* gave the national Parliament exclusive authority over "Indians, and lands reserved for the Indians," and the courts have ruled that "Indians" includes the Inuit. Until 1982, that was all the Constitution said about the native peoples.

The Constitution now has three provisions on the subject.

1 First, it says that the Charter's guarantee of certain rights and freedoms "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada," including rights or freedoms recognized by the Royal Proclamation of 1763, and any rights or freedoms acquired by way of land claims settlement.

2 Second, "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed," and the aboriginal peoples are defined as including the Indian, Inuit and Métis peoples.

3 Third, in 1983, the amending formula was used for the first time to add to the aboriginal and treaty rights of Canada's native peoples, rights or freedoms that already existed by way of land claims agreements or that might be so acquired, and to guarantee all the rights equally to men and women. The amendment also provided that there would be no amendments to the constitutional provisions relating to Indians and Indian reserves, or the aboriginal rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, without discussions at a conference of First Ministers with representatives of the native peoples. The amendment came into force on June 21, 1984.

The *Constitution Act, 1982*, also contains a section on equalization and regional disparities. This proclaims: (1) that the national government and Parliament and the provincial governments and legislatures "are committed to promoting equal opportunities for the well-being of Canadians, furthering economic development to reduce disparities in opportunities, and providing essential public services of reasonable quality to all Canadians"; and (2) that the government and Parliament of Canada "are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

The 1982 Act also provides that the guarantees for the English and French languages do not abrogate or derogate from any legal or customary right or privilege enjoyed by any other language, and that the Charter shall be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada."

Finally, the Act provides for English and French versions of the whole written constitution, from the Act of 1867 to the Act of 1982, which would make both versions equally authoritative.

Powers of the National and Provincial Governments

The national Parliament has power "to make laws for the peace, order and good government of Canada," except for "subjects assigned exclusively to the legislatures of the provinces." The provincial legislatures have power over direct taxation in the province for provincial purposes, natural resources, prisons (except penitentiaries), charitable institutions, hospitals (except marine hospitals), municipal institutions, licences for provincial and municipal revenue purposes, local works and undertakings (with certain exceptions), incorporation of provincial companies, solemnization of marriage, property and civil rights in the province, the creation of courts and the administration of justice, fines and penalties for breaking provincial laws, matters of a merely local or private nature in the province, and education (subject to certain rights

The provincial legislatures have the constitutional right of direct taxation for areas under provincial jurisdiction, such as education.

of the Protestant and Roman Catholic minorities in some provinces).

Subject to the limitations imposed by the *Constitution Act, 1982*, the provinces can amend their own constitutions by an ordinary Act of the legislature. They cannot touch the office of Lieutenant-Governor; they cannot restrict the franchise or qualifications for members of the legislatures or prolong the lives of their legislatures except as provided for in the *Canadian Charter of Rights and Freedoms*.

Of course the power to amend provincial constitutions is restricted to changes in the internal machinery of the provincial government. Provincial legislatures are limited to the powers explicitly given to them by the written constitution. So no provincial legislature can take over powers belonging to the Parliament of Canada. Nor could any provincial legislature pass an Act taking the province out of Canada. No such power is to be found in the written constitution, so no such power exists.

Similarly, of course, Parliament cannot take over any power of a provincial legislature.

Parliament and the provincial legislatures both have power over agriculture and immigration, and over certain aspects of natural resources; but if their laws conflict, the national law prevails.

Parliament and the provincial legislatures also have power over old age, disability and survivors' pensions; but if their laws conflict, the provincial power prevails.

By virtue of the *Constitution Act, 1867*, everything not mentioned as belonging to the provincial legislatures comes under the national Parliament.

This looks like an immensely wide power. It is not, in fact, as wide as it looks, because the courts have interpreted the provincial powers, especially "property and civil rights," as covering a very wide field. As a result, all labour legislation (maximum hours, minimum wages, safety, workers' compensation, industrial relations) comes under provincial law, except for certain industries such as banking, broadcasting, air navigation, atomic energy, shipping, interprovincial and international railways, telephones, telegraphs, pipelines, grain elevators, enterprises owned by the national government, and works declared by Parliament to be for the general advantage of Canada or of two or more of the provinces.

Social security (except for employment insurance, which is purely national, and the shared power over pensions) comes under the provinces. However, the national Parliament, in effect, established nation-wide systems of hospital insurance and medical care by making grants to the provinces (or, for Quebec, yielding some of its field of taxes) on condition that their plans reach certain standards.

The courts' interpretation of provincial and national powers has put broadcasting and air navigation under Parliament's general power to make laws for the "peace, order and good government of Canada," but otherwise

Photo: Courtesy of the Canadian Forces/MCpl Michel Durand

The constitution gives the federal Parliament exclusive power over national defence.

has reduced it to not much more than an emergency power for wartime or grave national crises like nation-wide famine, epidemics, or massive inflation (though some recent cases go beyond this).

However, the Fathers of Confederation, not content with giving Parliament what they thought an ample general power, added, "for greater certainty," a long list of examples of exclusive national powers: taxation, direct and indirect; regulation of trade and commerce (the courts have interpreted this to mean interprovincial and international trade and commerce); "the public debt and property" (this enables Parliament to make grants to individuals – such as family allowances – or to provinces: hospital insurance and medicare, higher education, public assistance to the needy, and equalization grants to bring the standards of health, education and general welfare in the poorer provinces up to an average national standard); the post office; the census and statistics; defence; beacons, buoys, lighthouses and Sable Island;* navigation and shipping; quarantine; marine hospitals; the fisheries; interprovincial and international ferries, shipping, railways, telegraphs, and other such international or interprovincial "works and undertakings" – which the courts have interpreted to cover pipelines and telephones; money and banking; interest; bills of exchange and promissory notes; bankruptcy; weights and measures; patents; copyrights; Indians and Indian lands (the courts have interpreted this to cover Inuit as well); naturalization and aliens; the criminal law and procedure in criminal cases; the general law of marriage and divorce; and local works declared by Parliament to be "for the general advantage of Canada or of two or more of the provinces" (this has been used

* *The Fathers of Confederation evidently felt that Sable Island, "the graveyard of the Atlantic," was such a menace to shipping that it must be under the absolute control of the national government, just like lighthouses. So they placed it under the exclusive legislative jurisdiction of the national Parliament (by section 91, head 9, of the Constitution Act of 1867). They also (by the third schedule of that Act) transferred the actual ownership from the Province of Nova Scotia to the Dominion of Canada, just as they did with the Nova Scotia lighthouses.*

many times, notably to bring atomic energy and the grain trade under exclusive national jurisdiction). A 1940 constitutional amendment gave Parliament exclusive power over unemployment insurance and a specific section of the Act of 1867 gives it power to establish courts "for the better administration of the laws of Canada." This has enabled Parliament to set up the Supreme Court of Canada and the Federal Court.

As already noted, the national Parliament can amend the Constitution in relation to the executive government of Canada and the Senate and the House of Commons, except that it cannot touch the office of the Queen or the Governor General, nor those aspects of the Senate and the Supreme Court of Canada entrenched by the amending formulas.

Though Parliament cannot transfer any of its powers to a provincial legislature, nor a provincial legislature any of its powers to Parliament, Parliament can delegate the administration of a federal Act to provincial agencies (as it has done with the regulation of interprovincial and international highway traffic); and a provincial legislature can delegate the administration of a provincial Act to a federal agency. This "administrative delegation" is an important aspect of the flexibility of our constitution.

Canadian and American Government

Canada and the United States are both democracies. They are also both federal states. But there are important differences in the way Canadians and Americans govern themselves.

One fundamental difference is that the United States is a country of one basic language and culture. Canada is a country of two basic languages. The Fathers of Confederation deliberately chose to make it so.

Our official recognition of bilingualism is limited, but expanding. For example, it was at the specific request of the New Brunswick government that the adoption of French and English as the official languages of that province was enshrined in the constitution. Ontario, which has the largest number of French-speaking people outside Quebec, has provided French schools and an increasing range of services in French for Franco-Ontarians. Several other provinces have taken steps in the same direction.

But under the Constitution, every province except Quebec, New Brunswick and Manitoba is absolutely free to have as many official languages as it pleases, and they need not include either English or French. For example, Nova Scotia could make Gaelic its sole official language, or one of two, three or a dozen official languages in that province. Alberta could make Ukrainian its sole official language, or Ukrainian, Polish and classical Greek its three official languages. Quebec, New Brunswick and Manitoba also are free to have as many official languages as they please, but they must include English and French.

A second basic difference between our constitution and the American is, of course, that we are a constitutional monarchy and they are a republic. That looks like only a formal difference. It is very much more, for we have parliamentary-cabinet government, while the Americans have presidential-congressional.

What does that mean? What difference does it make?

First, in the United States the head of state and the head of the government are one and the same. The President is both at once. Here, the Queen, ordinarily

represented by the Governor General, is the head of state, and the Prime Minister is the head of the Government. Does that make any real difference? Yes: in Canada, the head of state can, in exceptional circumstances, protect Parliament and the people against a Prime Minister and Ministers who may forget that "minister" means "servant," and may try to make themselves masters. For example, the head of state could refuse to let a Cabinet dissolve a newly elected House of Commons before it could even meet, or could refuse to let Ministers bludgeon the people into submission by a continuous series of general elections. The American head of state cannot restrain the American head of government because they are the same person.

For another thing, presidential-congressional government is based on a separation of powers. The American President cannot be a member of either House of Congress. Neither can any of the members of his or her Cabinet. Neither the President nor any member of the Cabinet can appear in Congress to introduce a bill, or defend it, or answer questions, or rebut attacks on policies. No member of either House can be President or a member of the Cabinet.

Parliamentary-cabinet government is based on a concentration of powers. The Prime Minister and every other Minister must by custom (though not by law) be a member of one House or the other, or get a seat in one House or the other within a short time of appointment. All government bills must be introduced by a Minister or someone speaking on his or her behalf, and Ministers must appear in Parliament to defend government bills, answer daily questions on government actions or policies, and rebut attacks on such actions or policies.

Photo: Dianne Brydon

Congress meets in the Capitol, in Washington, D.C.

In the United States, the President and every member of both Houses is elected for a fixed term: the President for four years, the Senators for six (one-third standing for election every two years), the members of the House of Representatives for two. The only way to get rid of a President before the end of the four-year term is for Congress to impeach and try him or her, which is very hard to do. It has never been done, and has only been three times even attempted.

As the President, the Senators and the Representatives are elected for different periods, it can happen, and often does, that the President belongs to one party while the opposing party has a majority in either the Senate or the House of Representatives or both. So for years on end, the President may find his or her legislation and policies blocked by an adverse majority in one or both Houses. The President cannot appeal to the people by dissolving either House, or both: he or she has no such power, and the two Houses are there for their fixed terms, come what may, until the constitutionally fixed hour strikes.

And even when the elections for the presidency, the House of Representatives, and one-third of the Senate take place on the same day (as they do every four years), the result may be a Republican President, a Democratic Senate and a Republican House of Representatives or various other mixtures.

A President, accordingly, may have a coherent program to present to Congress, and may get Senators and Representatives to introduce the bills he or she wants passed. But each House can add to each of the bills, or take things out of them, or reject them outright, and what emerges from the tussle may bear little or no resemblance to what the President wanted. The majority in either House may have a coherent program on this or that subject; but the other House can add to it, or take things out of it, or throw the whole thing out; and again, what (if anything) emerges may bear little or no resemblance to the original. Even if the two Houses agree on something, the President can, and often does, veto the bill. The veto can be overridden only by a two-thirds majority in both Houses.

So when an election comes, the President, the Senator, the Representative, reproached with not having carried out his or her promises can always say: "Don't blame me! I sent the bill to Congress, and the Senate (or the Representatives, or both) threw it out, or mangled it beyond recognition"; "I introduced the bill I'd promised in the Senate, but the House of Representatives threw it out or reduced it to shreds and tatters (or the President vetoed it)"; "I introduced my bill in the House of Representatives, but the Senate rejected it or made mincemeat of it (or the President vetoed it). Don't blame me!"

So it ends up that nobody – not the President, not the Senators, not the Representatives – can be held really responsible for anything done or not done. Everybody concerned can honestly and legitimately say, "Don't blame me!"

True, a dissatisfied voter can vote against a President, a Representative or a Senator. But no matter what the voters do, the situation remains essentially the same. The President is there for four years and remains there no matter how often either House produces an adverse majority. If, halfway through the President's four-year term, the elections for the House and Senate return adverse majorities, the President still stays in office for the remaining two years with enormous powers. And he or she cannot get rid of an adverse House of Representatives or Senate by ordering a new election. The adverse majority in one or both Houses can block many things the President may want to do, but it cannot force him or her out of office. The President can veto bills passed by both Houses. But Congress can override this veto by a two-thirds majority in both Houses. The House of Representatives can impeach the President, and the Senate then tries him or her, and, if it so decides, by a two-thirds majority, removes him or her. No President has ever been removed, and there have been only three attempts to do it. In one, the Senate majority was too small; in the second, the President resigned before any vote on impeachment took place in the House of Representatives, and in the third, although the President was impeached, he was acquitted by the Senate.

Our Canadian system is very different. Nobody is elected for a fixed term. All important legislation is introduced by the Government, and all bills to spend public funds or impose taxes must be introduced by the Government and neither House can raise the amounts of money involved. As long as the Government can keep the support of a majority in the House of Commons, it can pass any legislation it sees fit unless an adverse majority in the Senate refuses to pass the bill (which very rarely happens nowadays). If it loses its majority support in the House of Commons, it must either make way for a government of another party or call a fresh election. If it simply makes way for a government of a different party, then that government, as long as it holds its majority in the House of Commons, can pass any legislation it sees fit, and if it loses that majority, then it, in its turn, must either make way for a new government or call a fresh election. In the United States, President and Congress can be locked in fruitless combat for years on end. In Canada, the Government and the House of Commons cannot be at odds for more than a few weeks at a time. If they differ on any matter of importance, then, promptly, there is either a new government or a new House of Commons.

Presidential-congressional government is neither responsible nor responsive. No matter how often either House votes against the President's measures, there he stays. He can veto bills passed by both Houses, but he cannot appeal to the people by calling an election to give him a Congress that will support

Photo: Library of Parliament/Tom Littlemore

The Senate and the House of Commons meet in the Parliament Buildings.

him. Parliamentary-cabinet government, by contrast, is both responsible and responsive. If the House of Commons votes want of confidence in a Cabinet, that Cabinet must step down and make way for a new government formed by an opposition party (normally the Official Opposition), or call an election right away so the people can decide which party will govern.

An American President can be blocked by one House or both for years on end. A Canadian Prime Minister, blocked by the House of Commons, must either make way for a new Prime Minister, or allow the people to elect a new House of Commons that will settle the matter, one way or another, within two or three months. That is real responsibility.

A third basic difference between our system and the Americans' is that custom, usage, practice and "convention" play a far larger part in our constitution than in theirs. For example, the President of the United States is included in the written constitution: his or her qualifications for the position, the method of election, the method of removal – all the essential powers of office, in black and white, unchangeable except by formal constitutional amendment.

The Canadian Prime Minister did not appear in the written constitution until 1982. The *Constitution Act* of that year empowered the Prime Minister to call a constitutional conference within one year, consisting of him- or herself and

the provincial Premiers and (for limited purposes) elected representatives of the Yukon Territory and the Northwest Territories, and another conference with the Premiers within 15 years.

Our written constitution still contains not one syllable on prime ministerial qualifications, the method of election or removal, or (except for the calling of the constitutional conferences) the Prime Minister's powers. Nor is there anything on any of these matters in any Act of Parliament, except for provision of a salary, pension and residence for the person holding the recognized position of first minister. Everything else is a matter of established usage, of "convention." There is nothing in any law requiring the Prime Minister or any other Minister to have a seat in Parliament; there is just a custom that he or she must have a seat, or get one within a reasonable time. There is nothing in any law to say that a government that loses its majority in the House of Commons on a matter of confidence must either resign (making way for a different government in the same House) or ask for a fresh general election.

A fourth basic difference between the American and Canadian systems is in the type of federalism they embody. The American system was originally highly decentralized. The federal Congress was given a short list of specific powers; everything not mentioned in that list belonged to the states "or to the people" (that is, was not within the power of either Congress or any state legislature). "States' rights" were fundamental. The Fathers of Confederation, gazing with horror at the American Civil War, decided that "states' rights" were precisely what had caused it, and acted accordingly.

"Here," said Sir John A. Macdonald, "we have adopted a different system. We have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and legislatures shall be conferred upon the general government and legislature. We have thus avoided that great source of weakness that has been the disruption of the United States. We hereby strengthen the central Parliament, and make the Confederation one people and one government, instead of five peoples and five governments, with merely a point of authority connecting us to a limited and insufficient extent."

The Fathers also, as we have seen, gave a long list of specific examples of exclusive national powers. They further provided that the members of the Senate, and all judges from county courts up (except judges of probate in Nova Scotia and New Brunswick) should be appointed by the national government, and that all Lieutenant-Governors of the provinces should be appointed, instructed and removable by the national government. They gave the national government and Parliament certain specific powers to protect the educational rights of the Protestant and Roman Catholic minorities of the Queen's subjects. They gave the national government power to disallow (wipe off the statute book) any Acts of provincial legislatures, within one year of their passage.

In both the United States and Canada, however, the precise meaning of the written constitution is settled by the courts. In the United States the courts have, in general, so interpreted their constitution as to widen federal and narrow state powers. In Canada, the courts (notably the judicial committee of the British Privy Council, which, till 1949, was our highest court) have in general so interpreted the *Constitution Act, 1867*, as to narrow federal power and widen provincial power. The result is that the United States is, in actual fact, now a much more highly centralized federation than Canada, and Canada has become, perhaps, the most decentralized federation in the world. Nonetheless, the fact that under our constitution the powers not specifically mentioned come under the national Parliament gives the central authority enough strength and leeway to meet many of the changed and changing conditions the years have brought.

The Rule of Law and the Courts

Responsible government and federalism are two cornerstones of our system of government. There is a third, without which neither of the first two would be safe: the rule of law.

What does the rule of law mean?

It means that everyone is subject to the law; that no one, no matter how important or powerful, is above the law – not the government; not the Prime Minister, or any other Minister; not the Queen or the Governor General or any Lieutenant-Governor; not the most powerful bureaucrat; not the armed forces; not Parliament itself, or any provincial legislature. None of these has any powers except those given to it by law: by the *Constitution Act, 1867*, or its amendments; by a law passed by Parliament or a provincial legislature; or by the common law of England, which we inherited, and which, though enormously modified by our own Parliament or provincial legislatures, remains the basis of our constitutional law and our criminal law, and the civil law (property and civil rights) of the whole country except Quebec (which has its own civil code).

If anyone were above the law, none of our liberties would be safe.

What keeps the various authorities from getting above the law, doing things the law forbids, exercising powers the law has not given them?

The courts. If they try anything of the sort, they will be brought up short by the courts.

But what's to prevent them from bending the courts to their will?

The great principle of the independence of the judiciary, which is even older than responsible government. Responsible government goes back only about 200 years. The independence of the judiciary goes back over 300 years to the *English Act of Settlement of 1701*, which resulted from the English Revolution of 1688. That Act provided that the judges, though appointed by the King (nowadays, of course, on the advice of a responsible Cabinet), could be removed only if both Houses of Parliament, by a formal address to the Crown, asked for their removal. If a judge gave a decision the government disliked, it could not touch him or her, unless both Houses agreed. In the almost three centuries that have followed, only one judge in the United Kingdom has been so removed, and none since 1830.

The Constitution provides that almost all our courts shall be provincial, that is, created by the provincial legislatures. But it also provides that the judges of all these courts from county courts up (except courts of probate in Nova Scotia and New Brunswick) shall be appointed by the federal government. What is more, it provides that judges of the provincial "superior courts" (the Superior Court of Quebec, the supreme courts of the other provinces, and all the provincial courts of appeal) shall be removable only on address to the Governor General by both Houses of Parliament. The Acts setting up the Supreme Court of Canada and the Federal Court have the same provision. No judge of any Canadian superior court has ever been so removed. All of them are perfectly safe in their positions, no matter how much the Government may dislike any of their decisions. The independence of the judiciary is even more important in Canada than in Britain, because in Canada the Supreme Court interprets the written constitution, and so defines the limits of federal and provincial powers.

With the inclusion of the *Canadian Charter of Rights and Freedoms*, the role of the courts has become even more important, since they have the tasks of enforcing the rights and of making the freedoms effective.

Judges of the county courts can be removed only if one or more judges of the Supreme Court of Canada, or the Federal Court, or any provincial superior court, report after inquiry that they have been guilty of misbehaviour, or have shown inability or incapacity to perform their duties.

The Supreme Court of Canada, established by an Act of the national Parliament in 1875, consists of nine judges, three of whom must come from the Quebec Bar. The judges are appointed by the Governor General on the advice of the national Cabinet, and hold office until they reach age 75. The Supreme Court has the final decision not only on constitutional questions but also on defined classes of important cases of civil and criminal law. It deals also with appeals from decisions of the provincial courts of appeal.

Photo: Supreme Court of Canada /Philippe Landreville

The Supreme Court of Canada Building.

The Institutions of Our Federal Government

By the *Constitution Act, 1867*, "the executive government of and over Canada is declared to continue and be vested in the Queen." She acts, ordinarily through the Governor General, whom she appoints, on the advice of the Canadian Prime Minister. The Governor General normally holds office for five years, though the tenure may be extended for a year or so.

Parliament consists of the Queen, the Senate and the House of Commons.

The Queen

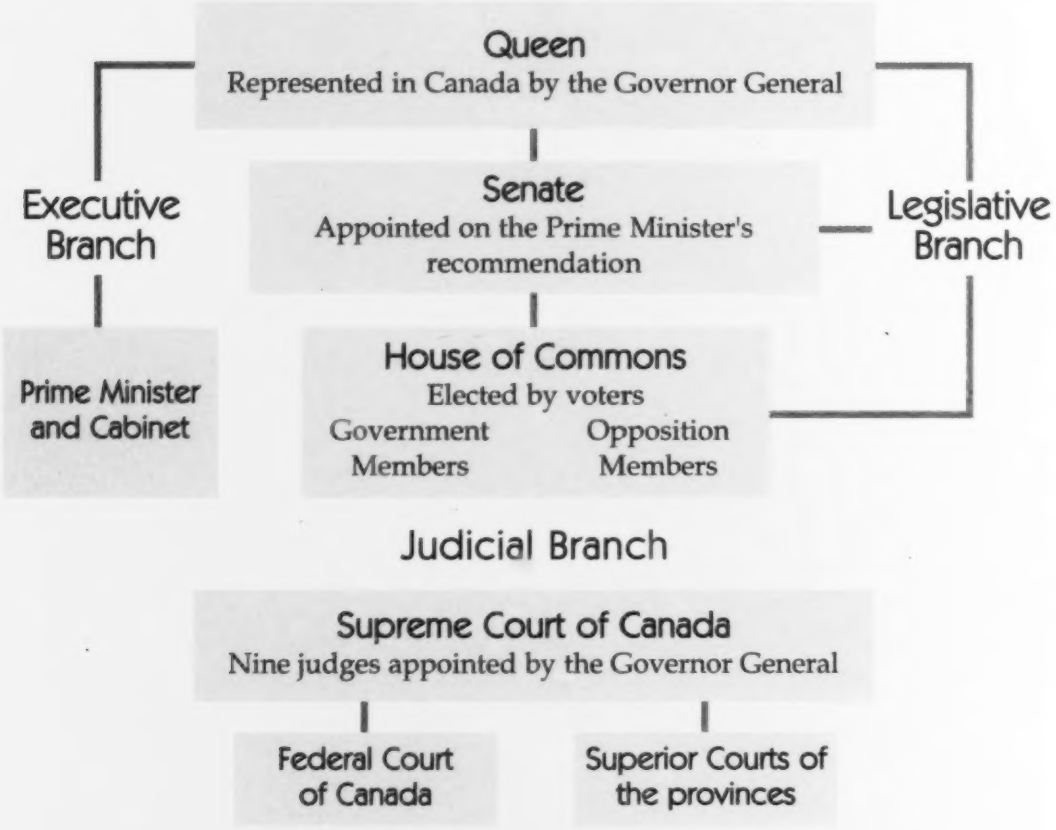
The Queen is the formal head of the Canadian state. She is represented federally by the Governor General, and provincially by the Lieutenant-Governors. Federal Acts begin: "Her Majesty, by and with the advice and consent of the Senate and the House of Commons, enacts as follows"; Acts in most provinces begin with similar words. Parliament (or the provincial legislature) meets only at the royal summons; no House of Parliament (or legislature) is equipped with a self-starter. No federal or provincial bill becomes law without the Royal Assent. The monarch has, on occasion, given the assent personally to federal Acts, but the assent is usually given by the Governor General or a deputy, and to provincial Acts by the Lieutenant-Governor or an administrator.

The Governor General and the Lieutenant-Governors have the right to be consulted by their Ministers, and the right to encourage or warn them. But they almost invariably must act on their Ministers' advice, though there may be very rare occasions when they must, or may, act without advice or even against the advice of the Ministers in office.

The Senate

The Senate usually has 105 members: 24 from the Maritime provinces (10 from Nova Scotia, 10 from New Brunswick, four from Prince Edward Island); 24 from Quebec; 24 from Ontario; 24 from the Western provinces (six each from Manitoba, Saskatchewan, Alberta and British Columbia); six from Newfoundland and Labrador; and one each from the Yukon Territory, the Northwest Territories and Nunavut. There is provision also for four or eight extra Senators: one – or two – from the Maritime region, Quebec, Ontario and the West; but this has been used only once, in 1990.

CANADA'S PARLIAMENTARY SYSTEM



The Senators are appointed by the Governor General on the recommendation of the Prime Minister. They hold office until age 75 unless they miss two consecutive sessions of Parliament. Till 1965, they held office for life. Senators must be at least 30 years old, and must have real estate worth $4,000 net, and total net assets of at least $4,000. They must reside in the province or territory for which they are appointed; in Quebec, they must reside, or have their property qualification, in the particular one of Quebec's 24 senatorial districts for which they are appointed.

The Senate can initiate any bills except bills providing for the expenditure of public money or imposing taxes. It can amend or reject any bill whatsoever. It can reject any bill as often as it sees fit. No bill can become law unless it has been passed by the Senate.

In theory these powers are formidable. But for over 40 years the Senate did not reject a bill passed by the House of Commons, and very rarely insisted on an amendment that the House of Commons rejected. Then, in 1988, it refused to pass the Free Trade Agreement till it had been submitted to

Photo: Library of Parliament/Stephen Fenn

The Senate in session.

the people in a general election. In 1989-90, it insisted on amendments to an unemployment insurance bill, amendments the Commons rejected; the Senate eventually passed the bill as submitted by the House. And in 1991, the Senate simply defeated a Commons bill respecting abortion. In other cases, the Senate has not adopted bills before the end of a session, thereby effectively stopping them from becoming law.

Most of the amendments the Senate makes to bills passed by the Commons are clarifying or simplifying amendments, and are almost always accepted by the House of Commons. The Senate's main work is done in its committees, where it goes over bills clause by clause and hears evidence, often voluminous, from groups and individuals who would be affected by the particular bill under review. This committee work is especially effective because the Senate has many members with specialized knowledge and long years of legal, business or administrative experience. Their ranks include ex-Ministers, ex-Premiers of provinces, ex-mayors, eminent lawyers and experienced farmers.

In recent decades, the Senate has taken on a new job: investigating important public concerns such as poverty, euthanasia and assisted suicide, illegal drugs, land use, science policy, aboriginal affairs, relations with the

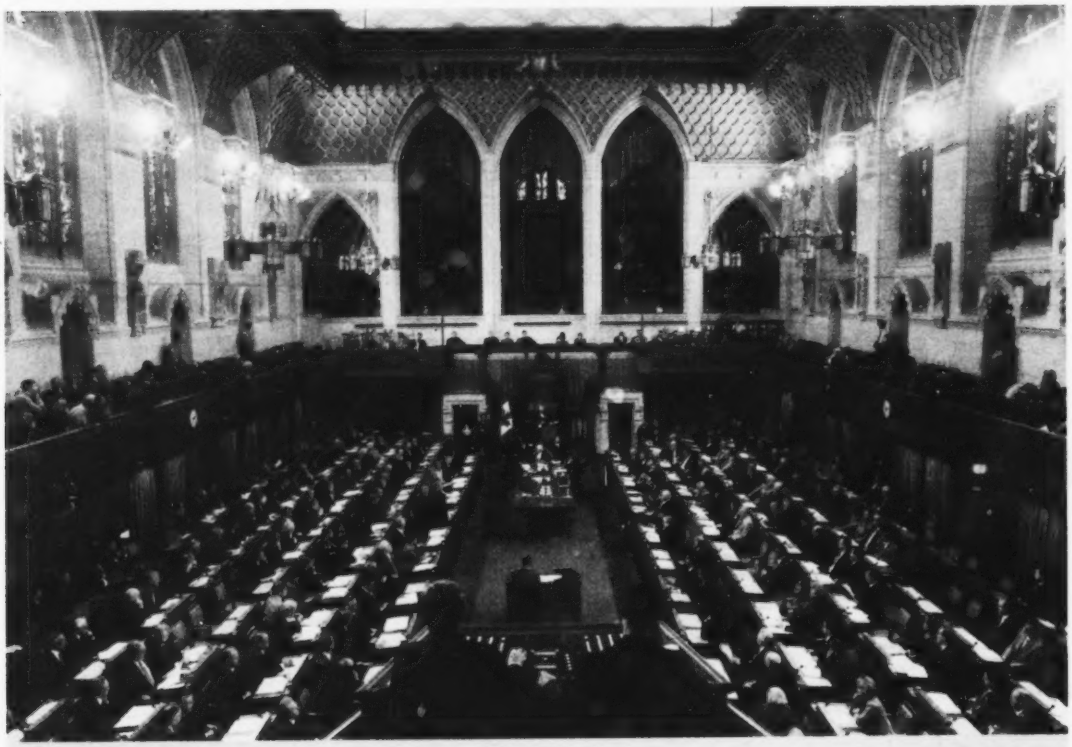
United States, and human rights. These investigations have produced valuable reports, which have often led to changes in legislation or government policy. The Senate usually does this kind of work far more cheaply than royal commissions or task forces because its members are paid already and it has a permanent staff at its disposal.

The House of Commons

The House of Commons is the major law-making body. In each of the country's 301 constituencies, or ridings, the candidate who gets the largest number of votes is elected to the House of Commons, even if his or her vote is less than half the total. The number of constituencies may be changed after every general census, pursuant to the constitution and the *Electoral Boundaries Readjustment Act* that allot parliamentary seats roughly on the basis of population. Every province must have at least as many Members in the Commons as it had in the Senate before 1982. The constituencies vary somewhat in size, within prescribed limits.

Following the 2001 census, the number of seats for three jurisdictions was increased. The boundaries of the constituencies in these jurisdictions will be determined by June 2003. This redistribution will come into force no earlier than June 29, 2004.

Photo: Library of Parliament/Stephen Fenn



The House of Commons in session.

Political Parties

Our system could not work without political parties. Our major and minor federal parties were not created by any law, though they are now recognized by the law. We, the people, have created them ourselves. They are voluntary associations of people who hold broadly similar opinions on public questions.

The party that wins the largest number of seats in a general election ordinarily forms the Government. Its leader is asked by the Governor General to become Prime Minister. If the government in office before an election comes out of the election without a clear majority, it has the right to meet the new House of Commons and see whether it can get enough support from the minor parties to give it a majority. This happened in 1925-26, 1962 and 1972.

The second largest party (or the largest party in the instance when the government in office does not win the highest number of seats but is able to form a government with the support of minor parties) becomes the Official Opposition and its leader becomes the person holding the recognized position of Leader of the Opposition. The Leader of the Opposition gets the same salary as a Minister. The leader of any party that has at least 12 seats also gets a higher salary than an ordinary Member of the House of Commons. These parties also get public money for research.

Area	Seats 2003	Redistribution (no earlier than June 29, 2004)
Ontario	103	106
Quebec	75	75
British Columbia	34	36
Alberta	26	28
Manitoba	14	14
Saskatchewan	14	14
Nova Scotia	11	11
New Brunswick	10	10
Newfoundland and Labrador	7	7
Prince Edward Island	4	4
Northwest Territories	1	1
Nunavut	1	1
Yukon Territory	1	1
Total	**301**	**308**

Why? Because we want criticism, we want watchfulness, we want the possibility of an effective alternative government if we are displeased with the one we have. The party system reflects the waves of opinion as they rise and wash through the country. There is much froth, but deep swells move beneath them, and they set the course of the ship.

The Prime Minister

As we have already noted, the prime ministership (premiership), like the parties, is not created by law, though it is recognized by the law. The Prime Minister is normally a Member of the House of Commons (there have been two from the Senate, from 1891 to 1892 and from 1894 to 1896). A non-Member can hold the office but, by custom, must seek election to a seat very soon. A Prime Minister may lose his or her seat in an election, but can remain in office as long as the party has sufficient support in the House of Commons to be able to govern, though again, he or she must, by custom, win a seat very promptly. The traditional way of arranging this is to have a Member of the party resign, thereby creating a vacancy, which gives the defeated Prime Minister the opportunity to run in a by-election. (This arrangement is also generally followed when the Leader of the Opposition or other party leader is not a Member.)

The Prime Minister is appointed by the Governor General. Ordinarily, the appointment is automatic. If the Opposition wins more than half the seats in an election, or if the Government is defeated in the House of Commons and resigns, the Governor General must call on the Leader of the Opposition to form a new government.

The Prime Minister used to be described as "the first among equals" in the Cabinet, or as "a moon among minor stars." This is no longer so. He or she is now incomparably more powerful than any colleague. The Prime Minister chooses the Ministers in the first place, and can also ask any of them to resign; if the Minister refuses, the Prime Minister can advise the Governor General to remove that Minister and the advice would invariably be followed. Cabinet decisions do not necessarily go by majority vote. A strong Prime Minister, having listened to everyone's opinion, may simply announce that his or her view is the policy of the Government, even if most, or all, the other Ministers are opposed. Unless the dissenting Ministers are prepared to resign, they must bow to the decision.

The Cabinet

As mentioned, the Prime Minister chooses the members of the Cabinet. All of them must be or become members of the Queen's Privy Council for Canada. Privy Councillors are appointed by the Governor General on the advice of the Prime Minister, and membership is for life, unless a member is dismissed by the Governor General on the same advice. All Cabinet Ministers and former Cabinet Ministers are always members, as are the Chief Justice of Canada and former chief justices and, usually,

Photo: Library of Parliament/Doug Millar

Cabinet meets around this oval table.

ex-Speakers of the House of Commons. Various other prominent citizens can be made members simply as a mark of honour. The whole Privy Council as such has never met. Only the Ministers and a handful of non-Ministers attend the rare ceremonial occasions when the Privy Council is called together, such as the accession of a new King or Queen. The Cabinet, "the Committee of the Privy Council," is the Council's operative body.

By custom, almost all the members of the Cabinet must be Members of the House of Commons, or, if not already Members, must win seats. Since Confederation, 77 men who were not members of either House have been appointed to the Cabinet, but they had to get seats in the House or the Senate within a reasonable time, or resign from the Cabinet. General McNaughton was Minister of National Defence for nine months without a seat in either House, but after he had twice failed to get elected to the Commons, he had to resign. Senators can be members of the Cabinet; the first Cabinet, of 13 members, had five Senators. But since 1911, usually there has been only one Cabinet Minister in the Senate, and that one without portfolio, the leader of the Government in the Senate.* (The Speaker of the Senate does have the *rank* of Cabinet Minister and is a member of the Privy Council.) Of course, no Senator can sit in the House of Commons, and no Member of the House of Commons can sit in the Senate. But a Minister from the House of Commons may, by invitation of the Senate, come to that chamber and speak (though not vote). The same opportunities are available to a Senator.

* *Twice between 1979 and 1984, there were three or four Senators in the Cabinet. The Conservatives, in 1979, elected very few MPs from Quebec, and the Liberals, in 1980, elected only two from the four Western provinces. So both parties had to eke out the necessary Cabinet representation for the respective provinces by appointing more Senators to the Cabinet.*

By custom, every province must, if possible, have at least one Cabinet Minister. Of course, if a province does not elect any government supporters, this becomes difficult. In that case, the Prime Minister may put a Senator from that province into the Cabinet, or get some Member from another province to resign his or her seat and then try to get a person from the "missing" province elected there. In 1921, the Liberals did not elect a single Member from Alberta. The Prime Minister, Mr. King, solved the problem of Alberta representation in the Cabinet by getting the Hon. Charles Stewart, Liberal ex-Premier of Alberta, nominated in the Quebec constituency of Argenteuil and then elected. Whether Mr. King's ploy would work now is quite another question. The voters of today do not always look with favour upon outside candidates being "parachuted" into their ridings. The smallest province, Prince Edward Island, has often gone unrepresented in the Cabinet for years at a stretch.

By custom also, Ontario and Quebec have 10 or 12 Ministers each, provided each province has elected enough government supporters to warrant such a number. Historically, at least one Minister from Quebec was an English-speaking Protestant, and there was at least one Minister from the French-speaking minorities outside Quebec, normally from New Brunswick or Ontario, or both. It also used to be necessary to have at least one English-speaking (usually Irish) Roman Catholic Minister. In recent years women have won increased recognition and Canada's multicultural nature has been reflected in Cabinet representation from Jewish and non-English, non-French, ethnocultural minorities.

The Speakers

The Speaker of the Senate is appointed by the Governor General on the recommendation of the Prime Minister.

The Speaker of the House of Commons is elected by secret ballot by the House itself after each general election. He or she must be a Member of the House. The Speaker is its presiding officer, decides all questions of procedure and order, controls the House of Commons staff, and is expected to be impartial, non-partisan and as firm in enforcing the rules against the Prime Minister as against the humblest opposition backbencher.

Until recently, the Commons' Speaker was, by custom, chosen from among the Members of the party in power, though there were cases (the most recent in 1979) where a Speaker of one party carried on after a change of government, and one (1957) where the Government was ready to support a Member from one of the minor parties. A Speaker sometimes drops his or her membership in a party, and runs in the next general election as an independent, although this has not recently been the case.

In 1985, the Commons adopted a new system whereby any Member, except Ministers of the Crown, party leaders and anyone holding an office within the House, may stand for election as Speaker, and the election itself is conducted by secret ballot in the Commons Chamber. The system goes a further step toward securing the Speaker against any lingering suspicion that he or she is the Government's choice and that the speakership is simply one of a number of prime ministerial appointments.

This new procedure also interrupts the custom of an alternating French- and English-speaking Speaker in the Commons. This tradition in the Senate has also been interrupted, for different reasons. In the House of Commons, if the Speaker is English-speaking, the Deputy Speaker must be French-speaking, and vice versa. The Deputy has occasionally been chosen from the Opposition.

Photo: Canadian Heritage

The Queen performs many ceremonial duties when visiting Canada.

What Goes On in Parliament

Opening of a Session

If the opening of a session also marks the beginning of a newly elected Parliament, you will find the Members of the House of Commons milling about in their chamber, a body without a head. On a signal, the great doors of the Chamber are slammed shut. They are opened again after three knocks, and the Usher of the Black Rod arrives from the Senate. He has been sent by the deputy of the Governor General, who is not allowed to enter the Commons, to announce that the Governor General desires the immediate attendance of Honourable Members in the Chamber of the Honourable the Senate. The Members then proceed to the Senate Chamber, where the Speaker of the Senate says: "I have it in command to let you know that His Excellency [Her Excellency] the Governor General does not see fit to declare the causes of his [her] summoning the present Parliament of Canada until the Speaker of the House of Commons shall have been chosen according to law." The Members then return to their own chamber and elect their Speaker.

Once the Governor General arrives in the Senate, the Usher of the Black Rod is again dispatched to summon the House of Commons, and the Members troop up again to stand at the bar of the Upper House. The Speaker then informs the Governor General of his or her election, and asks for the Crown's confirmation of all the traditional rights and privileges of the Commons. The Speaker of the Senate delivers that confirmation, and the Governor General delivers the Speech from the Throne, partly in English, partly in French.

Photo: Library of Parliament/McElligott Photography

"Evil to the one who thinks evil," motto of the Order of the Garter, is inscribed on the Black Rod. It is used to knock on the door of the House of Commons when it is summoned to the Senate.

The speech, which is written by the Cabinet, sets forth the Government's view of the condition of the country and the policies it will follow, and the bills it will introduce to deal with that

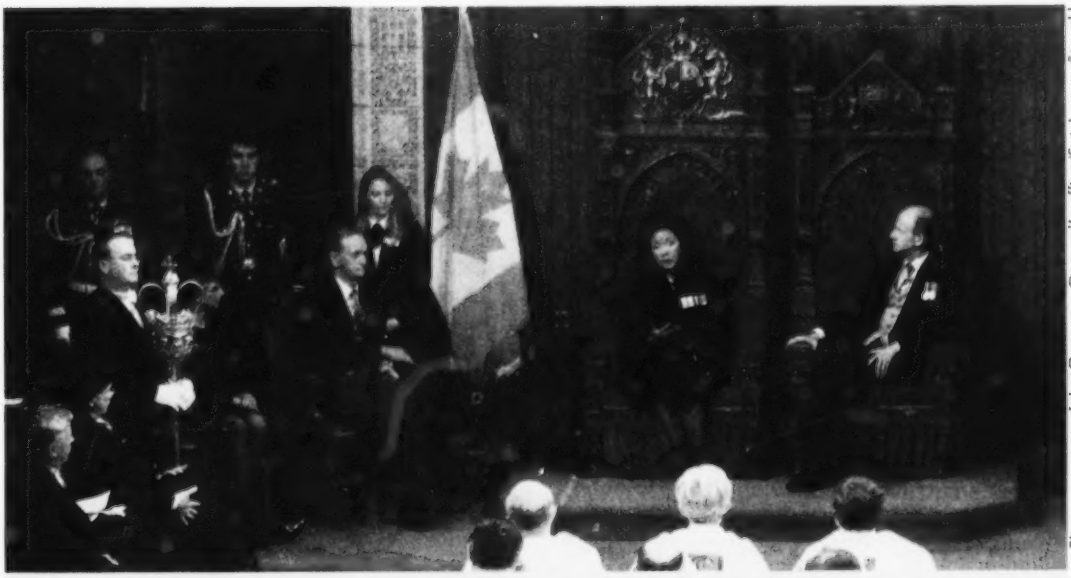


Photo: courtesy of the Governor General's office/Sgt Joanne Stoeckl

The Governor General delivers the Speech from the Throne.

condition. The Members of the House of Commons then return to their own chamber, where, normally, the Prime Minister immediately introduces a Bill Respecting the Administration of Oaths of Office. This is a dummy bill, never heard of again till the opening of the next session. It is introduced to reassert the House of Commons' right to discuss any business it sees fit before considering the Speech from the Throne. This right was first asserted by the English House of Commons more than 300 years ago, and is reasserted there every session by a similar pro forma bill.

This formal reassertion of an ancient right of the Commons has been of very great practical use in Canada more than once. In 1950, for example, a nation-wide railway strike demanded immediate action by Parliament. So the moment the House came back from the Senate Chamber, the Prime Minister introduced Bill C-1, but this time no dummy; this time a bill to end the strike and send the railway workers back to work, and it was put through all its stages, passed by both Houses, and received Royal Assent before either House considered the Speech from the Throne at all. Had it not been for the traditional assertion of the right of the Commons to do anything it saw fit before considering the speech, this essential emergency legislation would have been seriously delayed.

The address in reply to the Speech from the Throne is, however, normally the first real business of each session (a "sitting" of the House usually lasts a day; a "session" lasts for months, or even years, though there must be at least one sitting per year). A government supporter moves, and another government supporter seconds, a motion for an address of thanks to the Governor General for the gracious speech. The opposition parties move

amendments critical of the Government and its policies, and expressing want of confidence in the Government. Debate on this address and the amendments is limited to seven days, and ranges over the whole field of the nation's business.

A Working Day in the Commons

At the beginning of each sitting of the House, the Speaker takes the chair, the Sergeant-at-Arms lays the Mace (a gold-plated war club, symbol of the House's authority) on the long table in front of the Speaker, and the Speaker reads the daily prayer. Government supporters sit to the Speaker's right, Members of opposition parties to the left. The first few rows of desks on the government side, near the centre, are occupied by the Prime Minister and the Cabinet. Opposite them sit the Leader of the Official Opposition and the chief Members of his party. The leaders of the other major opposition parties sit in the front row farther down the Chamber, at the opposite end from the Speaker. At the long table sit the Clerk of the House, and the Deputy Clerk, and the other Table Officers, who keep the official record of decisions of the House. At desks in the wide space between Government and opposition sit the proceedings monitors, English and French, who identify each speaker and the person being addressed . This information complements the electronic recording of proceedings, which are published the next day. There is simultaneous translation, English and French, for all speeches, and all the proceedings are televised and recorded.

After certain routine proceedings, the House considers Government Orders on most days. Every day the House sits there is a Question Period, when Members (chiefly opposition) question Ministers on government actions and policies. This is usually a very lively 45 minutes, and is a most important part of the process of keeping the Government responsible and responsive.

Most of the rest of the day is taken up with bills, which are in fact proposed laws. Any Member can introduce a bill, but most of the time is reserved for bills introduced by the Government.

One hour of each day is reserved for the consideration of any business sponsored by a private Member, that is, by any Member who is not part of the Cabinet.

A Cabinet Minister or backbench Member proposing a bill first moves for the House's "leave" to introduce it. This is given automatically and without debate or vote. Next comes the motion that the bill be read a first time and printed. This also is automatic and without debate or vote. On a later day comes the motion for second reading. This is the stage at which Members debate the principle of the bill. If it passes second reading, it goes to a committee of the House, usually a standing committee. Each such committee may hear witnesses, and considers the bill, clause by clause, before reporting it (with or without amendments) back to the House. These committees have between seven and 15 members, and the parties are represented in proportion to their strength in the House itself. Some bills,

such as appropriation bills (based on the Estimates), which seek to withdraw money from the Consolidated Revenue Fund, are dealt with by the whole House acting as a committee.

Committees, sitting under less formal rules than the House, examine bills clause by clause. Each clause has to be passed. Any member of the committee can move amendments. When all the clauses have been dealt with, the chairperson reports the bill to the House with any amendments that have been adopted.

When a committee has reported the bill to the House, Members at this "report stage" may move amendments to the various clauses (usually, amendments they have not had the opportunity to propose in committee). When these have been passed, or rejected, the bill goes to third reading. If the motion for third reading carries, the bill goes to the Senate, where it goes through much the same process. Bills initiated in the Senate and passed there come to the Commons, and go through the same stages as Commons bills. No bill can become law (become an Act) unless it has been passed in identical form by both Houses and has been assented to, in the Queen's name, by the Governor General or a deputy of the Governor General (usually a Supreme Court judge). Assent has never been refused to a federal bill, and our first Prime Minister declared roundly that refusal was obsolete and had become unconstitutional. In Britain, Royal Assent has never been refused since 1707.

There are about 20 standing committees (Agriculture and Agri-food, Canadian Heritage, Transport, and so on) whose

Photo: Canadian Tourism Commission

Both Senate and House of Commons committees discuss issues around agriculture and agri-food.

members are appointed at the beginning of each session or in September of each year, to oversee the work of government departments, to review particular areas of federal policy, to exercise procedural and administrative responsibilities related to Parliament, to consider matters referred to them by the House, and to report their findings and proposals to the House for its consideration.

Included in the work of standing committees is the consideration of the government's spending estimates. The Standing Orders provide for these estimates to be sent to the committees for review.

Finally, standing committees are designated as having certain matters permanently referred to them (such as reports tabled in the House pursuant to a statute, and the annual report of certain Crown corporations). Each of these automatic Orders of Reference is permanently before the committees, and may be considered and reported on as the committees deem appropriate.

The House of Commons can, and does, set up special committees for the examination of particular subjects, including legislative committees whose mandate is solely to examine a particular piece of legislation. It also establishes, with the Senate, joint committees of the two Houses.

End of a Session

When both Houses have finished a session's business, Parliament is "prorogued" until the next session, which must, by law, come within a year.

Provinces and Municipalities

Every province has a legislative assembly (there are no Upper Houses) that is very similar to the House of Commons and transacts its business in much the same way. All bills must go through three readings and receive Royal Assent by the Lieutenant-Governor. In the provinces, assent has been refused 28 times, the last in 1945, in Prince Edward Island. Members of the legislature are elected from constituencies established by the legislature roughly in proportion to population, and whichever candidate gets the largest number of votes is elected, even if his or her vote is less than half the total.

Municipal governments take care of city parks.

Municipal governments — cities, towns, villages, counties, districts, metropolitan regions — are set up by the provincial legislatures, and have such powers as the legislatures see fit to give them. Mayors, reeves and councillors are elected on a basis that the provincial legislature prescribes.

There are now roughly 4,000 municipal governments in the country. They provide us with such services as water supply, sewage and garbage disposal, roads, sidewalks, street lighting, building codes, parks, playgrounds, libraries and so forth. Schools are generally looked after by school boards or commissions elected under provincial education Acts.

Living Government

We are apt to think of government as something static; as a machine that was built and finished long ago. Actually, since our democratic government is really only the sum of ourselves, it grows and changes as we do.

Canada today is not the Canada of 1867, and neither is the *Act* that made it. It has been changed by many amendments, all originated by us, the people of Canada. How we govern ourselves has also been changed by judicial interpretation of the written constitution, by custom and usage, and by arrangements between the national and provincial legislatures and governments as to how they would use their respective powers. These other ways in which our system has changed, and is changing, give it great flexibility, and make possible a multitude of special arrangements for particular provinces or regions within the existing written constitution, without the danger of "freezing" some special arrangement that might not have worked out well in practice.

There may still be many changes. Some are already in process, some have been slowly evolving since 1867, and some are only glimmerings along the horizon. They will come, as they always do in the parliamentary process, at the hands of many governments, with the clash of loud debate, and with the ultimate agreement of the majority who cast their votes.

We are concerned with the relations between French-speaking and English-speaking Canadians, and with the division of powers between the federal and provincial governments. We always have been. But the search for areas of agreement and the making of new adjustments has been a continual process from the beginning. The recognition of the French fact, which was limited in 1867, now embraces, in greater or lesser degree, the whole of Canada. All federal services must be available where required in either language. Federal, Quebec and Manitoba courts have always had to be bilingual. New Brunswick is now constitutionally bilingual. Criminal justice must now be bilingual wherever the facilities exist or can be made available.

The country's resources grow; the provinces' and territories' needs change. Some are rich, others less well off. Federalism makes possible a pooling of financial resources and reduction of such disparities. Yet there are always areas of dispute, new adjustments required, and special problems to be met. Federal-provincial conferences, bringing together all the heads of government, are fairly new in our history. But they are now very frequent, and a major force in evolving new solutions. Indeed, the *Constitution Act, 1982*, required that the Prime Minister convene such a conference within 15 years to review the procedure for constitutional amendment.

Photo: Elections Canada

Voting is one way of participating directly in our democracy.

Historically, Canada is a nation founded by the British and the French. Yet it is now a great amalgam of many peoples. They have common rights and needs, and their own particular requirements within the general frame of the law. All these must be recognized. We are far yet from realizing many of our ideals, but we have made progress.

As a country we have grown richer, but we have paid a price in terms of environmental pollution. We are leaving the farms and bushlands and crowding into the cities. Ours is becoming a computerized, industrialized, urbanized, and ever more multicultural society, and we face the difficulties of adapting ourselves and our institutions to new lifestyles.

These changes have produced a new concern for an environment that our forebears took for granted. We believe in just and peaceful sharing, but how is that to be achieved? We have gained for ourselves a certain measure of security for the aged and sick and helpless, yet poverty is still with us. So are regional disparities.

These are all problems of government, and therefore your problems. They all concern millions of people and are therefore difficult to solve. Parliaments and parties, like life, have no instant remedies, but they have one common aim. It is to get closer to you, to determine your real will, and to endeavour to give it form and thrust for action. That is the work you chose them for, and it can be done in the end only with your help. When you take an interest in your community, when you form an opinion in politics, and when you go to cast your vote, you are part of government.

Governors General of Canada since Confederation

		Assumed Office
1	**The Viscount Monck,** GCMG	July 1, 1867
2	**Lord Lisgar,** GCMG	Feb. 2, 1869
3	**The Earl of Dufferin,** KP, GCMG, KCB	June 25, 1872
4	**The Marquess of Lorne,** KT, GCMG	Nov. 25, 1878
5	**The Marquess of Lansdowne,** GCMG	Oct. 23, 1883
6	**Lord Stanley of Preston,** GCB	June 11, 1888
7	**The Earl of Aberdeen,** KT, GCMG	Sept. 18, 1893
8	**The Earl of Minto,** GCMG	Nov. 12, 1898
9	**The Earl Grey,** GCMG	Dec. 10, 1904
10	**Field Marshal H.R.H. The Duke of Connaught,** KG	Oct. 13, 1911
11	**The Duke of Devonshire,** KG, GCMG, GCVO	Nov. 11, 1916
12	**Gen. The Lord Byng of Vimy,** GCB, GCMG, MVO	Aug. 11, 1921
13	**The Viscount Willingdon of Ratton,** GCSI, GCIE, GBE	Oct. 2, 1926
14	**The Earl of Bessborough,** GCMG	April 4, 1931
15	**Lord Tweedsmuir of Elsfield,** GCMG, GCVO, CH	Nov. 2, 1935
16	**Maj. Gen. The Earl of Athlone,** KG, PC, GCB, GCMG, GCVO, DSO	June 21, 1940
17	**Field Marshal The Rt. Hon. Viscount Alexander of Tunis,** KG, GCB, GCMG, CSI, DSO, MC, LLD, ADC	April 12,1946
18	**The Rt. Hon. Vincent Massey,** PC, CH	Feb. 28, 1952

19	**Maj. Gen. The Rt. Hon. Georges Philias Vanier,** PC, DSO, MC, CD	Sept. 15, 1959
20	**The Rt. Hon. Daniel Roland Michener,** PC, CC	April 17, 1967
21	**The Rt. Hon. Jules Léger,** CC, CMM	Jan. 14, 1974
22	**The Rt. Hon. Edward Richard Schreyer,** PC, CC, CMM, CD	Jan. 22, 1979
23	**The Rt. Hon. Jeanne Sauvé,** PC, CC, CMM, CD	May 14, 1984
24	**The Rt. Hon. Ramon John Hnatyshyn,** PC, CC, CMM, CD, QC	Jan. 29, 1990
25	**The Rt. Hon. Roméo-A. LeBlanc,** PC, CC, CMM, CD	Feb. 8, 1995
26	**The Rt. Hon. Adrienne Clarkson,** CC, CMM, COM, CD	Oct. 7, 1999

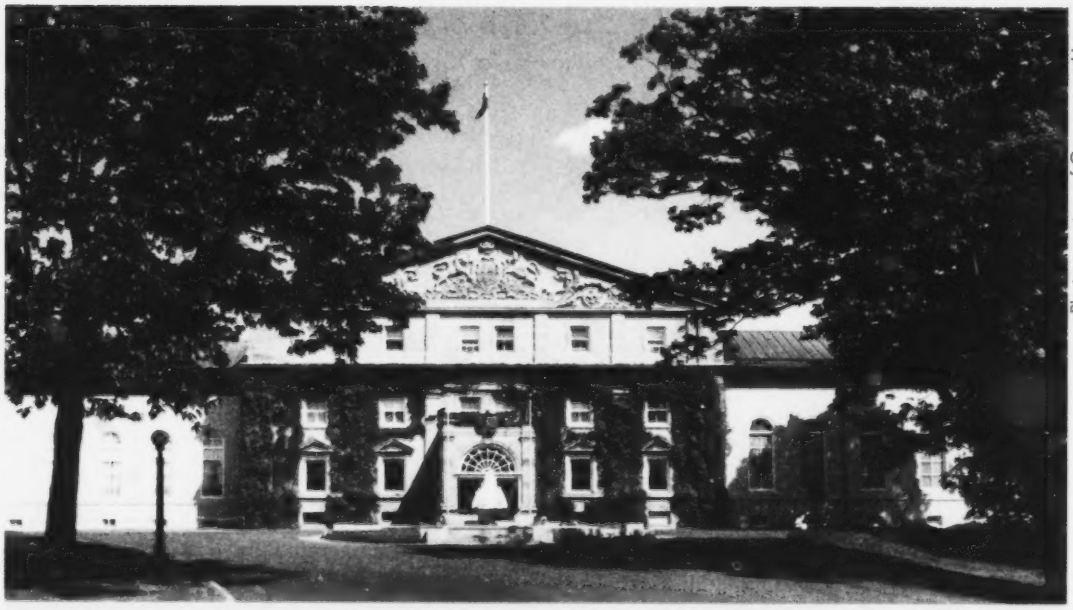


Photo: courtesy of Government House

Rideau Hall is the residence of the Governor General.

Canadian Prime Ministers since 1867

1	**Rt. Hon. Sir John A. Macdonald** July 1, 1867 to Nov. 5, 1873	Liberal-Conservative
2	**Hon. Alexander Mackenzie*** Nov. 7, 1873 to Oct. 8, 1878	Liberal
3	**Rt. Hon. Sir John A. Macdonald** Oct. 17, 1878 to June 6, 1891	Liberal-Conservative
4	**Hon. Sir John J.C. Abbott*** June 16, 1891 to Nov. 24, 1892	Liberal-Conservative
5	**Rt. Hon. Sir John S.D. Thompson** Dec. 5, 1892 to Dec. 12, 1894	Liberal-Conservative
6	**Hon. Sir Mackenzie Bowell*** Dec. 21, 1894 to April 27, 1896	Conservative
7	**Rt. Hon. Sir Charles Tupper*** (Baronet) May 1, 1896 to July 8, 1896	Conservative
8	**Rt. Hon. Sir Wilfrid Laurier** July 11, 1896 to Oct. 6, 1911	Liberal
9	**Rt. Hon. Sir Robert Laird Borden** Oct. 10, 1911 to Oct. 12, 1917	Conservative
10	**Rt. Hon. Sir Robert Laird Borden** Oct. 12, 1917 to July 10, 1920	Conservative**
11	**Rt. Hon. Arthur Meighen** July 10, 1920 to Dec. 29, 1921	Conservative
12	**Rt. Hon. William Lyon Mackenzie King** Dec. 29, 1921 to June 28, 1926	Liberal
13	**Rt. Hon. Arthur Meighen** June 29, 1926 to Sept. 25, 1926	Conservative
14	**Rt. Hon. William Lyon Mackenzie King** Sept. 25, 1926 to Aug. 7, 1930	Liberal

* *Prior to 1968, "Right Honourable" was accorded only to Prime Ministers who had been sworn into the Privy Council for the U.K. Prime Ministers Mackenzie, Abbott and Bowell were only members of the Canadian Privy Council and Prime Minister Tupper became a U.K. Privy Councillor after his term as Canada's Prime Minister.*

** *During his second period in office, Prime Minister Borden headed a coalition government.*

15	**Rt. Hon. Richard Bedford Bennett** (became Viscount Bennett, 1941) Aug. 7, 1930 to Oct. 23, 1935	Conservative
16	**Rt. Hon. William Lyon Mackenzie King** Oct. 23, 1935 to Nov. 15, 1948	Liberal
17	**Rt. Hon. Louis Stephen Saint-Laurent** Nov. 15, 1948 to June 21, 1957	Liberal
18	**Rt. Hon. John George Diefenbaker** June 21, 1957 to Apr. 22, 1963	Progressive Conservative
19	**Rt. Hon. Lester Bowles Pearson** Apr. 22, 1963 to Apr. 20, 1968	Liberal
20	**Rt. Hon. Pierre Elliott Trudeau** Apr. 20, 1968 to June 4, 1979	Liberal
21	**Rt. Hon. Charles Joseph Clark** June 4, 1979 to March 3, 1980	Progressive Conservative
22	**Rt. Hon. Pierre Elliott Trudeau** March 3, 1980 to June 30, 1984	Liberal
23	**Rt. Hon. John Napier Turner** June 30, 1984 to Sept. 17, 1984	Liberal
24	**Rt. Hon. Martin Brian Mulroney** Sept. 17, 1984 to June 25, 1993	Progressive Conservative
25	**Rt. Hon. A. Kim Campbell** June 25, 1993 to Nov. 4, 1993	Progressive Conservative
26	**Rt. Hon. Jean Joseph Jacques Chrétien** Nov. 4, 1993-	Liberal

Photo: ©NCC/CCN

The Prime Minister lives at 24 Sussex Drive, a home originally named Gorffwysfa, Welsh for "a place of peace."

Photo: Jean-Marc Carisse

Senator Eugene Forsey wanted us to know how government works in Canada for one very simple reason — there is nothing Canadians do in any given day that is not affected by how we govern ourselves. As he says inside this booklet: "We cannot work or eat or drink; we cannot buy or sell or own anything; we cannot go to a ball game or a hockey game or watch TV without feeling the effects of government. We cannot marry or educate our children, cannot be sick, born or buried without the hand of government somewhere intervening."

Through this lively and readable booklet, Senator Forsey has helped tens of thousands of students, teachers, legislators and ordinary citizens in Canada and around the world understand the Canadian system of government.

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